The Counsellor's Magazine;

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KNOWLEDGE OF THE LAW;

A Science of too interesting a Nature to be neglected by any One who has Property or Character to protect.

BY A SOCIETY OF GENTLEMEN,
OF THE MIDDLE TEMPLE.

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ADDRESS.

A Competent Idea of the Nature of this Periodical Performance, may be formed from the Perusal of the following introductory Address, which, though concise, is meant to be sufficiently explanatory.

It will consist of Two Divisions: In the First will be introduced the most practical Heads of the Law, which will be completed in regular succession, and include the Statutes and Adjudged Cases, under every respective Title down to the present Time. In order to preserve the Works distinct, fresh paging will be adopted on the Introduction of every new General Subject.

The Second Part of our Plan (which will also be distinctly paged) will be wholly miscellaneous, and consist of the Law Reports of the Day, or a faithful Statement of the Arguments and Decisions in the Courts at Westminster-Hall, from Term to Term, Abridgements of New Acts of Parliament, a Review of Law Books, Cases in Law, Equity, and Conveyancing, with the Opinions of eminent Counsel, and such other miscellaneous Law Articles as may deserve Attention. Young Gentlemen in their Clerkship, and Pupils or Students in every Department of the Law, will more particularly experience the great Utility of this Publication.

As a proper preliminary Article to a Work of ſuch general Importance as that which we now preſume to offer to the Public, we propoſe to begin with A NEW TREATISE ON THE LAW OF EVIDENCE; a Subject which may be conſidered as the only permanent Foundation on which the Superſtructure of the Law can with Propriety be raiſed.

Hints or other Communications from our Readers, which may eventually contribute to the Perfection of our Work, are reſpectfully ſolicited by the Editors, addreſſed to the Publiſhers named in the Title Page.

THE

THE COUNSELLOR'S MAGAZINE.

36 *G. III. c.* 7. *An Act for the Safety and Preſervation of His Majeſty's Perſon and Government againſt treaſonable and ſeditious Practices and Attempts.*

18*th* DECEMBER, 1795.

BY the 36 *G. III. c.* 7. it is enacted that, (duly conſidering the daring outrages offered to His Majeſty's moſt ſacred perſon in his paſſage to and from Parliament) If any perſon or perſons after the paſſing of this act, during the natural life of our Moſt Gracious Sovereign Lord the King, and until the end of the next ſeſſion of parliament after a demiſe of the crown, ſhall, within the realm or without, compaſs, imagine, invent, deviſe, or intend death or deſtruction, or any bodily harm tending to death or deſtruction, maim or wounding, impriſonment or reſtraint, of the perſon of our Sovereign Lord the King, his heirs and ſucceſſors, or to deprive or depoſe him or them from the ſtile, honour, or kingly name, of the imperial crown of this realm, or of any other of His Majeſty's dominions or countries; or to levy war againſt His Majeſty, within this realm, in order, by force or conſtraint, to compel him to change his meaſures or counſels, or in order to put any force or conſtraint upon, or to intimidate, or overawe, both houſes, or either houſe of parliament: or to move or ſtir any foreigner or ſtranger with force to invade this realm, or any other His Majeſty's dominions or countries, under the obeiſance of His Majeſty; and ſuch compaſſings, imaginations, in-

Perſons who ſhall compaſs, deviſe, &c. the death, reſtraint, &c. of His Majeſty, or his heirs, or to depoſe them, or to levy war to compel a change of meaſures, &c. to be deemed traitors.

ventions, devices, or intentions, or any of them, ſhall expreſs, utter, or declare, by publiſhing any printing or writing, or by any overt act or deed; being legally convicted thereof, upon the oaths of *two* credible witneſſes, upon trial, or otherwiſe convicted or attainted by due courſe of law, then every ſuch perſon ſo offending, ſhall be deemed a traitor, and ſhall ſuffer pains of death, and loſe and forfeit as in caſes of high treaſon.

Perſons, in *England*, who ſhall, by writing, *&c.* incite to hatred, or contempt of His Majeſty or the government, *&c.* guilty of high miſdemeanors; and for a ſecond offence may be tranſported for ſeven years.

And if any perſon within that part of *Great Britain* called *England*, at any time after the paſſing of this act, during *three years* from the day of paſſing this act, and until the end of the then next ſeſſion of parliament, ſhall maliciouſly and adviſedly, by writing, printing, preaching, or other ſpeaking, expreſs, publiſh, utter, or declare, any words or ſentences to incite or ſtir up the people to hatred or contempt of the perſon of His Majeſty, his heirs or ſucceſſors, or the government and conſtitution of this realm, as by law eſtabliſhed, then every ſuch perſon being thereof legally convicted, ſhall be liable to ſuch puniſhment as may by law be inflicted in caſes of high miſdemeanors; and if any perſon ſhall, after conviction, offend a ſecond time, and be thereupon convicted, before any commiſſion of oyer and terminer, or gaol delivery, or in His Majeſty's court of King's Bench, ſuch perſon may be adjudged, at the diſcretion of the court, either to ſuffer ſuch puniſhment as may now by law be inflicted in caſes of high miſdemeanors, or to be baniſhed this realm, or to be tranſported to ſuch place, as ſhall be appointed by His Majeſty for the tranſportation of offenders; which baniſhment or tranſportation ſhall be for ſuch term as the court may appoint, not exceeding ſeven years, *ſ.* 2.

Perſons tranſported found at large within *Great Britain* before the expiration of their term, to ſuffer death.

And if any offender who ſhall be ſo ordered by any ſuch court as aforeſaid to be baniſhed the realm, or tranſported beyond the ſeas, ſhall be afterwards at large within any part of the kingdom of *Great Britain*, without ſome lawful cauſe, before the expiration of the term for which ſuch offender or offenders ſhall have been ordered to be tranſported, every ſuch offender being ſo at large, being thereof lawfully convicted, ſhall ſuffer death, as in caſes of felony without benefit of clergy; and ſuch offender may be tried, either before juſtices of aſſize, oyer and terminer, great ſeſſions, or gaol delivery, for the county, city, liberty, borough, or place, where ſuch offender or offenders

offenders shall be apprehended and taken, or from whence he, she, or they, was or were ordered to be banished or transported, *s.* 3.

Limitation of actions for misdemeanors; and

Provided always, That no person by virtue of this act, shall for any misdemeanor incur any the penalties hereinbefore mentioned, unless he shall be prosecuted within six calendar months next after the offence committed, and the prosecution brought to trial or judgment within the first term, sittings, assizes, or sessions, in which, by the course of the court wherein such prosecution shall be depending, unless the court in which such prosecution shall be depending, shall, on special ground stated by motion in open court, think fit to enlarge the time for the trial thereof, or unless the defendant shall be prosecuted to or towards an outlawry; and that no person shall, upon trial, be convicted by virtue of this act, for any misdemeanor, but by the oaths of *two* credible witnesses, *s.* 4.

no persons to be convicted thereof but by the oath of two witnesses.

Persons accused of treason, entitled to benefit of 7 *W. III.* and 7 *Ann.*

Provided always, That every person who shall at any time be accused, indicted, or prosecuted, for any offence made treason by this act, shall be entitled to the benefit of the act made in the seventh year of king *William* the Third, intituled, *An Act for regulating of Trials in Cases of Treason and Misprision of Treason*; and also to the provisions made by another act passed in the seventh year of Queen *Anne*, intituled, *An Act for improving the Union of the Two Kingdoms*, *s.* 5.

Act not to prevent prosecution at common law.

Provided also, That nothing in this act contained shall extend to prevent or affect any prosecution at the common law, for any offence within the provisions of this act, unless the party shall have been first prosecuted under this act, *s.* 6.

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36 *G. III. c.* 8. *An Act for the more effectually preventing Seditious Meetings and Assemblies.*

18*th* December, 1795.

WHEREAS assemblies of divers persons, collected for or under the pretext of deliberating on public grievances, and of agreeing on petitions, &c. to the King, or to both, or either house of parliament, have of late been made use of to serve the ends of factious and seditious persons, Be

No meeting of more than fifty perſons (except county meetings, &c.) to be holden for preparing petitions for alterations of matters eſtabliſhed in church or ſtate, unleſs notice be given by ſeven houſeholders, &c.

it therefore enacted, That no meeting, of any deſcription of perſons, exceeding the number of fifty perſons, (and except any meeting of any county, riding, or diviſion, called by the Lord Lieutenant, cuſtos rotulorum, or ſheriff; or a meeting called by the convener of any county or ſtewartry in *Scotland*; or any meeting called by two or more juſtices of the county or place where ſuch meeting ſhall be holden; or any meeting of any county, having different ridings or diviſions, called by any two juſtices of any one or more of ſuch ridings or diviſions; or any meeting called by the major part of the grand jury of the county, or of the diviſion of the county, where ſuch meeting ſhall he holden, at their general aſſizes or general quarter ſeſſions of the peace; or any meeting of any city, or borough, or town corporate, called by the mayor or other head officer of ſuch city, or borough, or town corporate; or any meeting of any ward or diviſion of any city or town corporate, called by the alderman or other head officer of ſuch ward or diviſion; or any meeting of any corporate body) ſhall be holden, for or on the pretext of conſidering of or preparing any petition, &c. or other addreſs, to the king, or to both, or either houſe of parliament, for alteration of matters eſtabliſhed in church or ſtate, or for or on the pretext of deliberating upon any grievance in church or ſtate, unleſs notice of the intention to hold ſuch meeting, and of the time and place, and of the purpoſe for which it ſhall be propoſed to be holden, ſhall be given, in the names of ſeven perſons at the leaſt, being houſeholders reſident within the county, city, or place where ſuch meeting ſhall be propoſed to be holden, whoſe places of abode and deſcriptions ſhall be inſerted in

Notice not to be inſerted, unleſs the authority to do ſo be written at the foot thereof.

ſuch notice, and which notice ſhall be given by advertiſement in ſome public newſpaper uſually circulated in the county and diviſion where ſuch meeting ſhall be holden five days at the leaſt before ſuch meeting ſhall be holden, or ſhall be delivered in manner herein-after mentioned; and that ſuch notice ſhall not be inſerted in any ſuch newſpaper unleſs the authority to inſert ſuch notice ſhall be ſigned by ſeven ſuch perſons at the leaſt, and unleſs

Notice and authority to be preſerved, and produced to a juſtice if required.

ſuch authority, ſo ſigned, ſhall be written at the foot of a true copy of ſuch notice, and ſhall be delivered to the perſon required to inſert the ſame in any ſuch newſpaper as aforeſaid; which perſon ſhall cauſe ſuch notice and authority to be carefully preſerved, and ſhall alſo, at any time

time after such notice shall have been inserted in such paper, and within fourteen days after the day on which such meeting shall be had, produce such notice and authority, and cause a true copy thereof (if required) to be delivered to any justice for the county, city, town, or place, where such person shall reside, or where such newspaper shall be printed, and who shall require the same; and if any person shall insert any such notice in any newspaper, without such authority, or if any person to whom any such notice and authority shall have been delivered for the purpose of inserting such notice in any such newspaper, shall refuse to produce such notice and authority, or to deliver a copy thereof, being thereunto required, within three days after such production and copy, or either of them, shall have been so required, he shall for every such offence, forfeit fifty pounds to any person who shall sue for the same, *s.* 1.

Penalty of 50*l.* for inserting notice without such authority, &c.

Provided always, nevertheless, and be it further enacted, That it shall be lawful to deliver any such notice signed by the seven persons, with their places of abode, and descriptions, five days at the least before the day on which such meeting shall be holden, to the clerk of the peace of the county, &c. within which such meeting shall be proposed to be holden; and such clerk of the peace shall, without delay, send a copy of such notice, with such signatures and additions, to three justices at the least, of such county, &c. then resident within such county, &c. or in case the justices of the city, borough, or town, where such meeting shall be proposed to be holden, shall have exclusive jurisdiction, then to three of such justices, if so many shall reside within such jurisdiction, and if not, then to so many of such justices as shall be resident within such exclusive jurisdiction; and in such case, such notice shall be as effectual, as if it had been given by public advertisement, inserted in any such newspaper, *s.* 2.

Notice may be given to the clerk of the peace, who shall send a copy to the justices:

Such notice to be effectual.

And all meetings, of any description of persons, exceeding fifty (except as aforesaid), holden without such previous notice, for the purposes aforesaid, shall be deemed unlawful assemblies, *s.* 3.

Meetings without notice are unlawful assemblies.

If any persons, exceeding fifty, being assembled contrary to the provisions of this act, and being required or commanded by any one or more justices, or by the sheriff of the county or his under sheriff, or by the mayor or other head officer or justice of any city or town corporate, where

If 12 or more unlawfully assembled shall continue together one

hour after being required by a justice, &c. to disperse, they shall suffer death.

where such assembly shall be, by proclamation to be made in the king's name, in the form herein-after directed, to disperse themselves, and peaceably to depart, shall, to the number of twelve or more, continue together by the space of one hour after such command or request made by proclamation, then such continuing together of twelve or more persons, shall be adjudged felony without benefit of clergy, and the offenders therein shall suffer death. *s.* 4.

Proclamation to be made.

And the order and form of the proclamation shall be as hereafter followeth: the justice, or other person authorized by this act to make the proclamation, shall, among such persons assembled, or as near to them as he can safely come, with a loud voice command, or cause to be commanded, silence while proclamation is making, and after that shall openly and with loud voice make, or cause to be made, proclamation in these words, or like in effect:

Form.

OUR Sovereign Lord the King chargeth and commandeth all persons being assembled immediately to disperse themselves, and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the act, made in the thirty-sixth year of King George *the* Third, *for the more effectually preventing seditious meetings and assemblies, s.* 5.

GOD save the KING.

If in meetings pursuant to notice, any matter shall be propounded or deliberated on, purporting that any thing by law established may be altered except by King, Lords, and Commons, &c. a magistrate may order them to disperse; and if 12 or more shall continue

If in any meeting holden in pursuance of any such notice, any matter shall be in such notice proposed to be propounded or deliberated upon at such meeting, purporting that any matter or thing by law established may be altered otherwise than by the authority of the King, Lords, and Commons, in parliament assembled, or shall tend to incite or stir up the people to hatred or contempt of the person of His Majesty, his heirs or successors, or of the government and constitution of this realm, as by law established, it shall be lawful for one or more justices, or the sheriff of the county, or for the mayor or other head officer, or any justice of any city or town corporate, where any such meeting shall be, by proclamation, to require or command the persons there assembled to disperse themselves; and if any persons, to the number of twelve or more, being so required or commanded, by proclamation to be made in the king's name, in the form hereinbefore directed, to disperse themselves, and peaceably to depart, shall, to the number of twelve or more, notwithstanding

ſtanding ſuch proclamation made, continue together by the ſpace of one hour after ſuch proclamation, then ſuch continuing together of twelve or more, ſhall be adjudged felony without benefit of clergy, and the offenders therein ſhall ſuffer death, *ſ.* 6.

together an hour thereafter, they ſhall ſuffer death.

And if any one or more juſtices preſent at any meeting requiring ſuch notice, ſhall think fit to order any perſon who ſhall at ſuch meeting proceed to propound or maintain any propoſition for altering any thing by law eſtabliſhed, otherwiſe than as aforeſaid, or ſhall make any propoſition, or hold any diſcourſe, for the purpoſe of inciting and ſtirring up the people to hatred or contempt of the perſon of His Majeſty, or the government and conſtitution, to be taken into cuſtody, to be dealt with according to law; and if the ſaid juſtice or juſtices, or any of them, or any peace officer acting under their or any of their orders, ſhall be obſtructed in taking into cuſtody any perſon ſo ordered to be taken into cuſtody, then it ſhall be lawful for any ſuch juſtice or juſtices to make ſuch proclamation: and if any perſons to the number of twelve or more, being required or commanded by ſuch proclamation to diſperſe and peaceably to depart, ſhall, to the number of twelve or more, continue together by the ſpace of one hour after ſuch proclamation, then ſuch continuing of twelve or more, ſhall be adjudged felony without benefit of clergy, and the offenders ſhall ſuffer death, *ſ.* 7.

Juſtices meeting on notice may order perſons maintaining propoſitions for altering any thing by law eſtabliſhed except by authority of the King, Lords, and Commons, *&c.* to be taken into cuſtody; and in caſe of reſiſtance cauſe proclamation to be made; and if 12 or more continue an hour after, they ſhall ſuffer death.

And it is further enacted, That every juſtice and juſtices, ſheriff, under-ſheriff, mayor, and other head officer, is hereby authorized on notice or knowledge of any ſuch meeting or aſſembly, to reſort to the place where ſuch aſſembly ſhall be, or ſhall be intended to be holden, or to any part thereof, and there to do, or order to be done, all ſuch acts, matters, and things, as the caſe may require, which they are hereby enabled to do, or order to be done, or which they are otherwiſe by law enabled to do, or ordered to be done; and it ſhall be lawful for all and every juſtices of the peace, ſheriff, under-ſheriff, mayor, and other head officer, to take and require the aſſiſtance of any number of conſtables or other officers of the peace, within their reſpective diſtricts, or within the diſtrict or place wherein every ſuch meeting ſhall be holden; which conſtables and other officers of the peace are hereby required to attend accordingly, and to give ſuch aſſiſtance

Juſtices may reſort to aſſemblies and act, and require the aſſiſtance of peace officers.

as

as ſhall be neceſſary for the due execution of this act, ſ. 8.

Perſons not diſperſing within an hour after proclamation may be apprehended;

And if ſuch perſons ſo aſſembled, or twelve or more of them, after proclamation made, ſhall continue together, and not diſperſe themſelves within one hour, it ſhall be lawful for every juſtice of the peace, &c. where ſuch aſſembly ſhall be, and alſo for every high or petty conſtable, and other peace officer, and alſo for every mayor, juſtice, ſheriff, and other head officer, high or petty conſtable, and other peace officer, of any city or town corporate where ſuch aſſembly ſhall be, and for ſuch other perſon as ſhall be commanded to be aſſiſting unto any ſuch juſtice, &c. who are hereby empowered to command all His Majeſty's ſubjects, of age and ability, to be aſſiſting to them therein, to ſeize and apprehend, and they are hereby required to ſeize and apprehend, ſuch perſons ſo aſſembled, and continuing together after proclamation made, and forthwith to carry them before one or more of His Majeſty's juſtices of the county or place where ſuch perſons ſhall be ſo apprehended, in order to their being proceeded againſt according to law; and if the perſons ſo aſſembled, or any of them, ſhall happen to be killed, maimed, or hurt in the diſperſing, ſeizing, or apprehending them, or endeavouring ſo to do, by reaſon of their reſiſting the perſons ſo diſperſing, ſeizing, or apprehending, or endeavouring ſo to do, then every ſuch juſtice, &c. or other peace officer, and all and ſingular perſons, aiding and aſſiſting, ſhall be free, diſcharged, and indemnified, as well againſt the King's majeſty, as againſt all and every other perſon, ſ. 9.

and if killed or maimed in reſiſting, the magiſtrate, &c. indemnified.

Perſons obſtructing magiſtrates attending meetings, or obſtructing perſons proclaiming, to ſuffer death.

Provided always, That if any perſon ſhall, with force and arms, wilfully and knowingly oppoſe, obſtruct, or in any manner wilfully hinder, or hurt, any juſtice, or other perſon authorized as aforeſaid, who ſhall attend or be going to attend any ſuch meeting, or any perſon who ſhall begin to proclaim, or go to proclaim, according to any proclamation hereby directed to be made, whereby ſuch proclamation ſhall not be made, then every ſuch oppoſing, obſtructing, hindering, or hurting, any ſuch juſtice or other perſons ſo authorized, and ſo attending, or going to attend, or any ſuch perſon or perſons ſo beginning or going to make any ſuch proclamation, ſhall be adjudged felony without benefit of clergy, and the offenders

fenders therein ſhall ſuffer death: and every ſuch perſon ſo being aſſembled to the number of fifty or more, to whom any ſuch proclamation ought to have been made, if the ſame had not been hindered, ſhall likewiſe, in caſe they or any of them, to the number of twelve or more, ſhall continue together, and not diſperſe themſelves within one hour after ſuch let or hindrance ſo made, having knowledge of ſuch let or hindrance ſo made, ſhall be adjudged felons, and ſhall ſuffer death without benefit of clergy: and if any perſon or perſons, at any ſuch aſſembly, ſhall with force and arms wilfully and knowingly oppoſe, obſtruct, or in any manner wilfully hinder, or hurt, any juſtice or other magiſtrate, or any peace officer, in apprehending or taking into cuſtody any perſon or perſons, or endeavouring ſo to do, every ſuch oppoſing, obſtructing, hindering, or hurting, ſhall be adjudged felony without benefit of clergy, and the offenders ſhall ſuffer death, *ſ.* 10.

Perſons aſſembled to whom proclamation ought to have been made, if not been hindered, continuing together to the number of 12 for an hour after ſuch hindrance, to ſuffer death.

Perſons oppoſing the taking offenders into cuſtody to ſuffer death.

And the ſheriffs depute and their Subſtitutes, ſtewards depute and their ſubſtitutes, juſtices, magiſtrates of royal boroughs, and all other inferior judges and magiſtrates, and all high and petty conſtables or other peace officers, of any county, ſtewartry, city, or town, in *Scotland*, ſhall have the ſame powers and authorities, for putting this act in execution within *Scotland*, as the juſtices and other magiſtrates reſpectively have, by virtue of this act, within and for the other parts of this kingdom; and every perſon who ſhall be convicted of any of the felonies aforementioned, within that part of *Great Britain* called *Scotland*, ſhall for every ſuch offence incur and ſuffer the pain of death, and confiſcation of moveables, *ſ.* 11.

Sheriffs depute, *&c.* in *Scotland*, to have the ſame power as juſtices in *England*.

Perſons convicted of felonies in *Scotland*, to incur the pain of death and confiſcation of moveables.

And it is hereby enacted, That places for lectures or debates, concerning ſuppoſed public grievances, or matters relating to the laws, conſtitution, government, or policy of theſe kingdoms, where money is paid for admiſſion, unleſs previouſly licenſed, ſhall be deemed diſorderly places, and the perſons opening or uſing them ſhall forfeit one hundred pounds. And the perſons managing the proceedings, and the perſons *paying* or receiving money for admiſſion, or delivering or *receiving* tickets, ſhall forfeit one hundred pounds, *ſ.* 12.

Penalty for giving political lectures.

And any perſon who ſhall appear, or act as maſter or miſtreſs, or as the perſon having the management, of any ſuch houſe, room, field, or place, ſhall be deemed a per-

Perſons appearing as maſter, *&c.* of ſuch

places liable to prosecution.

son by whom the same is opened or used, and shall be liable to be sued or prosecuted, and punished as such, though he or she be not the real owner or occupier thereof, *s.* 13.

Magistrates who, by information on oath, suspect that any place is opened for delivering lectures, *&c.* may demand to be admitted; and in case of refusal, the place to be deemed disorderly, and 100*l.* forfeited.

And it shall be lawful for any justice or justices, or chief magistrate respectively, of any county, &c. who shall by information upon oath, have reason to suspect that any place is opened or used for delivering lectures or discourses, contrary to the provisions of this act, to go to such house, or place, and demand admittance therein; and if refused admittance to such house, or place, the same shall be deemed a disorderly house or place, within the meaning of this act; and all the provisions respecting any house, or place, herein-before declared to be a disorderly house, or place, shall be applied to such house, or place, and every person refusing such admittance shall forfeit one hundred pounds to any person who shall sue for the same, *s.* 14.

If magistrates are refused admittance to any licensed place at the time of delivering lectures, *&c.* it shall be deemed disorderly, and the person refusing shall forfeit 100*l.*

Provided always, That it shall be lawful for any justice or justices, or chief magistrate respectively, where any such house, room, or other building, shall be licensed as aforesaid, to go to such house, room, or building, at the time of delivering any such lecture or discourse therein, or at the time appointed for that purpose, and demand to be admitted therein; and in case of refusal, the same shall be deemed, notwithstanding any such license, a disorderly house or place; and every person refusing such admittance shall forfeit one hundred pounds to any person who will sue for the same, *s.* 15.

Two justices may license places for lecturing; and may revoke them.

Provided nevertheless, That it shall be lawful for two or more justices of the county, &c. where any house or place shall be, which any person shall be desirous to open for any of the purposes aforesaid, by writing under their hands and seals, at their general quarter session, or at any special session to be held for the particular purpose, to grant a licence to any person desiring the same, to open such house, or place, for the purpose of delivering for money any such lectures or discourses, on any of the subjects aforesaid, the same being clearly expressed in such licence, for which licence a fee of one shilling, and no more, shall be paid, and the same shall be in force for one year, and no longer, or for any less space of time, therein to be specified; and which licence it shall be lawful for the justices of the same county, or place, at any general

neral quarter ſeſſion, to revoke and declare void, by any order of ſuch juſtices, a copy whereof ſhall be delivered to the perſon to whom the ſaid licence ſo revoked ſhall have been granted, or ſhall be left at the houſe, or place, for which ſuch licence ſhall have been granted, and thereupon ſuch licence ſhall ceaſe and determine, *ſ.* 16.

Recovery of forfeitures.

Any perſon entitled to any of the forfeitures aforeſaid may ſue by action of debt in any of His Majeſty's courts of record at *Weſtminſter*, or in the courts of juſticiary or exchequer in *Scotland*, when the cauſe of action ſhall ariſe in *Scotland*: Provided that if any action or ſuit ſhall be brought againſt any perſon for any thing done in purſuance and in execution of this act, the defendant may plead the general iſſue; and if a verdict paſs for the defendant, or the plaintiff diſcontinue his action, or be nonſuited, or judgment be given againſt the plaintiff, then ſuch defendant ſhall have treble coſts, *ſ.* 17.

General iſſue.

Treble coſts.

Act not to extend to univerſities.

But nothing in this act ſhall extend to any lectures to be delivered in any of the univerſities of theſe kingdoms, by any member thereof or any perſon authorized by the chancellor, vice chancellor, or other proper officers of ſuch univerſities, *ſ.* 18.

nor to inſtructors of youth.

And no payment made to any ſchoolmaſter or other perſon by law allowed to inſtruct youth, in reſpect of any lectures or diſcourſes delivered by him, ſhall be within the meaning of this act, *ſ.* 19.

Act not to abridge any law.

Nothing in this act ſhall be deemed to take away or abridge any proviſion already made by the law of this realm, or of any part thereof, for the ſuppreſſion or puniſhment of any offence deſcribed in this act, *ſ.* 20.

Act to be read at certain times.

This act ſhall be openly read at every *Epiphany* quarter ſeſſions of the peace, and at every leet or law day, *ſ.* 21.

Limitation of actions.

Provided, That no perſon ſhall be proſecuted by virtue of this act, unleſs ſuch proſecution ſhall be commenced within ſix calendar months after the offence committed; and no action ſhall be brought, for any of the penalties by this act impoſed, unleſs it ſhall be brought within three calendar months next after the offence committed, *ſ.* 22.

Commencement and continuance of act.

This act ſhall commence and have effect within the city of *London*, and twenty miles thereof, from the day next after the day of paſſing this act; and ſhall commence within all other parts of the kingdom, from the expiration of ſeven days next after the paſſing of this act;

and ſhall continue in force three years from the day of paſſing this act, and until the end of the then next ſeſſion of parliament, *ſ.* 23.

Waters, *v.* Smith.

The court will diſcharge a feme covert on filing common bail, if it appear that the plaintiff by whom ſhe has been arreſted knew her to be covert at the time of contracting the debt.

Mich. 36 *G. III. Waters*, v. *Smith.* Erſkine ſhewed cauſe againſt a rule to diſcharge the defendant out of cuſtody on filing common bail, on the ground that ſhe was a *feme covert.* He ſaid that the ground of the application, if true, was a defence to the action; and that this was not the time for making ſuch an objection. That coverture, like infancy, was a fact to be eſtabliſhed by evidence; and that if the former were permitted to be gone into in this ſtage of the proceeding, there was no reaſon why the latter ſhould not alſo; and yet that had never been attempted. That even if the defendant were a *feme covert*, that of itſelf would not in all caſes be a defence, becauſe if ſhe had a ſeparate maintenance from the huſband, ſhe was reſponſible for her own contract. And that the defendant ought therefore to be obliged to plead her coverture.

Ruſſell in ſupport of the rule. Though coverture be a defence to the action, of late years the court has interfered in this ſtage of the proceedings, where it has clearly appeared that the defendant was a *feme covert*; and that that fact was known to the plaintiff. And the plaintiff has nothing to complain of in this caſe, becauſe it appears by the affidavit, in ſupport of the rule, that he knew the defendant was married at the time when the debt was contracted; and this is not denied by any affidavit on the other ſide.

By the court: Though when a married woman impoſes on a trader, and contracts on her own credit, we will not relieve her in a ſummary way, yet according to the lateſt authority on the ſubject, with which the Maſter has furniſhed us, where it has clearly appeared that the defendant was a *feme covert*, and there has been no contrariety of evidence about that fact, the court has diſcharged her out of cuſtody on filing common bail. Here that fact is poſitively

poſitively ſworn to on one ſide, and not contradicted by the other. Therefore let the rule be made abſolute. VI. *Durnf. and Eaſt, Part* 5.

Mich. 36 *G. III.* The KING, *v.* the Inhabitants of WHITTLEBURY.

A ſervant who had been hired for a year, was taken ill five days before the end of the year, on which he went to his mother's, and ſent to his maſter for his money; the latter ſent him the whole year's wages deducting one ſhilling for the reſt of the year, and the ſervant ſaid he was ſatisfied: held that this was an agreement by the maſter and ſervant to put an end to the contract before the end of the year, and conſequently that the ſervant gained no ſettlement by ſuch hiring and ſervice.

Two juſtices removed J. *Roberts*, his wife, and ſon, from *Whittlebury* to *Paulerſpury*: the ſeſſions, on appeal, being of opinion on the facts hereafter ſtated, that the contract hereafter mentioned between *J. Grimſdick*, the maſter of the pauper, and *J. Roberts*, was diſſolved before the end of the year, quaſhed the order of removal, ſubject to the opinion of this court on the following caſe: "The pauper was born at Whittlebury, and in the year 1783 he was hired by John *Grimſdick* of *Paulerſpury*, to ſerve him from Michaelmas in that year until the Michaelmas following at the wages of 50*s*. He entered into the ſervice, and continued with his maſter until within five days of the end of the year, when he went to *Towceſter Statute* to ſeek for a ſervice for the next year. While he was there, he was ſuddenly taken ill of a fever, which continued for ſix weeks, and he was deprived of his ſenſes during part of that time. He went from *Towceſter Statute* to his mother; but neither he nor his mother having any money to maintain him under his illneſs, he that night deſired his mother to go to his maſter for his money, and to bring away his clothes: the mother went the next day, and at her return ſhe brought his money all but one ſhilling, which ſhe told him his maſter had ſtopped for the remainder of the year, and gave it to him together with his clothes, with which he was ſatisfied; and he thought himſelf at liberty to hire himſelf to another maſter if he had been well enough."

Percival and *Vaughan* argued in ſupport of the order of ſeſſion; and *Leycaſter*, *Dayrell*, and *B. Morice* contra.

LORD KENYON, Ch. J. There is no doubt but that the parties may put an end to the contract during any part of the year, either at the beginning, in the middle, or only a day before the end of it; and if they do, the ſervant gains no ſettlement, becauſe the act of parliament requires that the relation of maſter and ſervant ſhould continue during a whole year. As far as the maſter had the power, he did put an end to the contract before the end

of

of the year: he had no right to deduct the ſhilling but on the ground that the pauper did not continue his ſervant until the end of the year. Then, what was the conduct of the ſervant? he received his money, ſaying that he was ſatisfied; and it alſo appears that he thought he might have hired himſelf to another maſter before the end of the year. One party ſaid, I put an end to the contract as far as lies in my power; the other ſaid, I alſo agree to put an end to it as far as reſpects me; therefore both parties, whoſe conſent was neceſſary, did conſent to diſſolve the contract before the expiration of the year.

GROCE, J. Of the ſame opinion; obſerving that, at the time when the ſervant ſent his mother to his maſter for his money; his wages were not due; no money was due to him until the year expired, or until there was an end to the contract: this meſſage, therefore, was an offer, on the part of the ſervant, to put an end to the contract. Then the maſter paid the whole year's wages, deducting one ſhilling for the reſt of the year; the ſervant received this, together with his clothes, and ſaid that he was ſatisfied; by that he ſignified his conſent to put an end to the contract.

LAURENCE, J. Declared his opinion in words to the ſame effect. Order of ſeſſions confirmed. VI. *Durnf.* & *Eaſt.* Part 5.

To the EDITORS *of the* COUNSELLOR'S MAGAZINE.

GENTLEMEN,

As the following caſe is curious and intereſting, you will perhaps oblige me by favouring it with a place in your new Miſcellany. You may rely on its being faithfully reported. If the Counſellor's Magazine ſhould anſwer the expectations I have formed from the propoſed plan, you may expect in me

A CONSTANT CORRESPONDENT.

Gray's Inn, Jan. 26, 1796.

THE CASE of GEORGE COOMBES.

If a loaded piſtol be fired from the land, at a diſtance

AT the Admiralty Seſſion held at the Old Bailey in the month of June, 1785, George Coombes, who was indicted with William Perrott, Jonathan Edwards, Edward Voſs, and three others, was found guilty on an indictment

ment which charged, That they, on the 15th of July, 1784, with force and arms, upon the high ſea, within the juriſdiction of the Admiralty of England, about the diſtance of half a mile from Chriſt-Church harbour, in the county of Southampton, in and upon William Allen feloniouſly, wilfully, and of their malice aforethought, did make an aſſault; and that the ſaid William Perrott fired a certain gun, charged with gunpowder and one leaden bullet, did diſcharge and ſhoot off againſt and upon him the ſaid William Allen, &c. thereby giving him, the ſaid William Allen, one mortal wound, &c. upon the high ſea aforeſaid, within the juriſdiction aforeſaid, of which ſaid mortal wound he, the ſaid William Allen, afterwards died. And that the ſaid Jonathan Edwards, George Coombes, &c. at the time of committing the felony and murder aforeſaid, then and there, upon the high ſea aforeſaid, within the juriſdiction aforeſaid, feloniouſly, wilfully, and of their malice aforethought, were preſent, aiding, abetting, comforting, aſſiſting, and maintaining the ſaid William Perrott to kill and murder the ſaid William Allen in manner and form aforeſaid; and ſo the jurors ſay the ſaid Jonathan Edwards, George Coombes, &c. then and there, upon the high ſea aforeſaid, within the juriſdiction aforeſaid, feloniouſly, wilfully, and of their malice aforethought, did kill and murder the ſaid William Allen.

of two hundred yards from the ſea, and a man is maliciouſly killed in the water 100 yards from the ſhore, the offender ſhall be tried by the Admiralty juriſdiction, for the offence is committed where the death happens, and not on the place from whence the cauſe of the death proceeds.

It appeared in evidence, that the priſoners were ſuppoſed ſmugglers, belonging to two luggers which lay in Chriſt-Church harbour. The deceaſed was maſter of his majeſty's ſloop the Oreſtes. On the afternoon of the 15th of July, 1784, William Allen, not being able to get into the harbour with the Oreſtes, manned his boat for the purpoſe of ſeizing the ſmuggling luggers, but in rowing into the harbour, they ſtruck upon a ſand-bank oppoſite to the houſe of one Sellon. Perrott, Coombes, and the other priſoners quitted the luggers, ran on ſhore with loaded muſkets in their hands, concealed themſelves behind a wall near Sellon's houſe, and from thence fired at the king's boat, as they were puſhing her from the ſand-bank, by which firing Allen, who was on board the boat, was killed. The ſand-bank was in the ſea, about two hundred yards from the ſhore; and Sellon's houſe was about two hundred yards, or more, from the ſea.

Upon

Upon this evidence the priſoner Coombes was found guilty; but ſeveral points were raiſed in his favour, and it was the inclination of the counſel to have a ſpecial verdict: but it was at length agreed to take a caſe; and the queſtions reſerved were afterwards appointed to be argued before ALL THE JUDGES OF ENGLAND in the Exchequer Chamber.

The queſtions were, Whether, under the circumſtances of this caſe, the priſoner had been properly tried by the Admiralty juriſdiction? Or, whether he ought not to have been tried by the common law?

This caſe was argued by counſel twice; firſt on the 24th of November, 1785, in the Exchequer chamber, and afterwards on the 20th of January, 1786, at Serjeant's Inn, before ALL THE JUDGES, except Lord Loughborough; and they were of opinion, that the priſoner was tried by a competent juriſdiction.

Mr. Juſtice Willes delivered this opinion on the following day, at the Old Bailey, before Sir James Marriot, judge of the Admiralty Court, who pronounced ſentence of death upon the priſoner; and he was executed purſuant to the ſentence.

SITTINGS BEFORE LORD KENYON.

Guildhall, London, Dec. 9, 1795.

LINCOLN, *v.* HODGSON.

THIS was an action on a bill of exchange brought by the indorſee againſt the acceptor—the amount of the bill was 55l. The defence ſet up to this action was, that this bill had been actually paid. The circumſtances were briefly theſe:—This bill was accepted by the defendant to accommodate the drawer, Mr. Piſtor, who had given the acceptor no conſideration for his acceptance; but the holder had diſcounted it for Piſtor the drawer. When the bill became due, the plaintiff agreed to take two other bills of exchange to the ſame amount as a ſecurity till the other bill ſhould be paid. Thoſe bills were never paid, and therefore the plaintiff, who was the *bona fide* holder of this bill for a fair conſideration, was entitled to recover. The bill was in theſe words:

"*London, Dec. 29th,* 1794.

"Two months after date, pay to my order, fifty-five ounds. Value received. "WM. PISTOR."

On

On the part of the defendant, it was not denied, that if the facts ſtated were true the plaintiff would be entitled to a verdict. But it was ſaid, the caſe had not been truly ſtated by the plaintiff's counſel. It was contended, that the plaintiff did not take the two bills of exchange as a ſecurity for the payment of the bill, which was the ſubject of this action, but that he took them as actual payment of that bill, and never thought of ſuing the preſent defendant till he found the acceptors of the other two bills had become bankrupts. The reaſon why the plaintiff had not given up this bill when he received the other two, was owing to this circumſtance, as he ſhould prove by Piſtor, that when he delivered the two bills to the plaintiff, the plaintiff could not find the preſent bill, and Piſtor told him not to give himſelf any trouble about it. He could have it at ſome other time.

Piſtor was called and proved theſe facts.

The lord chief juſtice, in ſumming up to the jury, obſerved, that the plaintiff and defendant in this cauſe appealed to a court of juſtice without any ſtain upon their characters, though *on ſome other characters there was a great deal of ſtain.* The whole of this cauſe reſolved itſelf into this point, whether the jury believed the teſtimony of Piſtor. If they did, there was no queſtion in the caſe. If the plaintiff took thoſe two bills in payment for the bill now under conſideration, and was not ſo briſk in exacting payment, if he had not uſed legal diligence till the acceptors of thoſe bills were inſolvent, it would be very hard if the credit which he had given to thoſe people, were to operate to the prejudice of Hodgſon the defendant.

The jury found a verdict for the plaintiff for 58*l.* including damages.

IN THE COMMON PLEAS, GUILDHALL.

WILLIAMS, *v.* HOMINGWAY.

THIS cauſe is of the utmoſt importance to the community. The defendant purchaſed an ox in Smithfield Market for 19*l.* and ſold it in the ſame market for 20*l.* on the ſame day. His pretext was, that all the good old ſtatutes againſt foreſtalling, regrating, &c. were repealed by Alderman Harley's bill, the 12th George III. 1772; but Alderman Skinner, the late Lord Mayor, ordered him to be proſecuted at common law. The trial came

on before lord chief juſtice Eyre.—The proof of the fact was complete.

The chief juſtice was very clear that the laws reached the offender, notwithſtanding Harley's act; and he commended the promoters of the proſecution in very warm terms, and hoped the example would be followed throughout the kingdom.

The jury, without heſitation, gave a verdict for 38*l.* being double the original price.

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36 *G. III. c.* 18. *An Act for the Reduction of the Drawbacks and Bounties now allowed on the Exportation of Sugar.*

24*th* DECEMBER 1795.

Part of drawbacks on exportation of ſugar to ceaſe from certain periods.

BY the 36 *G. III. c.* 18. It is enacted, That, from and after the twentieth of *December*, 1795, of the drawbacks now allowed by law on the exportation from *Great Britain* of any ſugar, in the ſame ſtate in which it was imported from foreign parts, four ſhillings for each hundred weight of ſuch ſugar ſhall ceaſe, determine, and be no longer paid to the exporter thereof: That, from and after the thirty-firſt of *January*, 1796, of the drawbacks or bounties, now allowed by law on the exportation from *Great Britain* of any refined ſugar called *Baſtards*, or any ground or powdered ſugar, or refined loaf-ſugar broken in pieces, or ſugar called *Candy*, four ſhillings for each hundred weight of ſuch ſugar ſhall ceaſe: and that, from and after the ſaid thirty-firſt of *January*, 1796, of the drawbacks or bounties, now allowed by law on the exportation from *Great Britain* of any other refined ſugar, ſeven ſhillings for each hundred weight of ſuch ſugar ſhall ceaſe. But nothing herein contained ſhall extend, to reduce the drawback now allowed by law on ſugar exported to *Ireland*, in the ſame ſtate in which it was imported into *Great Britain* from foreign parts, *ſ.* 1.

Act not to extend to ſugar exported to *Ireland* in the ſtate as into *Great Britain*.

Out of the duties on ſugar a ſum to be ſet apart quarterly for 10 years, and

And from and after the paſſing of this act, out of the monies ariſing from the rates and duties upon ſugar imported into *Great Britain*, the ſum of £280,029 18*s.* 8½*d.* being one fourth part of £. 1,120,119 14*s.* 10*d.* the annual average produce for three years, ending the fifth of *January*, 1795, of the ſaid rates and duties upon ſugar, ſhall

ſhall quarterly, on the fifth of *January*, the fifth of *April*, the fifth of *July*, and the tenth of *October*, in every year, during the period of ten years, be ſet apart from the remainder of the monies ariſing from the ſaid rates and duties; and that the ſaid remainder of the ſaid rates and duties ſhall, during the ſaid period of ten years, be paid into the receipt of His Majeſty's exchequer, diſtinctly and apart from all other branches of the public revenue; and that the ſaid remainder ſo paid, or ſo much thereof as ſhall be ſufficient, ſhall be deemed an addition made to the revenue, for the purpoſe of defraying the increaſed charge occaſioned by the loan to be made by virtue of any act or acts to be paſſed in this ſeſſion of parliament; and that there ſhall be provided and kept in the office of the auditor of the ſaid receipt, during the ſaid period of ten years, a book or books, in which the ſaid remainder of the monies ariſing from the ſaid rates and duties ſhall, together with the monies ariſing from any other rates or duties granted in this ſeſſion of parliament, for the purpoſe of defraying ſuch increaſed charge as aforeſaid, be entered ſeparate from all other monies paid or payable to His Majeſty, upon any account whatever, *ſ.* 2.

the remainder, &c. kept ſeparate from other monies.

And it is further enacted, That the reduction of drawbacks and bounties, directed by this act to be made upon the exportation from *Great Britain* of any ſugar of the ſeveral deſcriptions herein mentioned, ſhall take effect, and be put in execution, on all ſuch ſugar which ſhall be ſhipped or laden on board any ſhip in *Great Britain* at any time after the twentieth of *December*, 1795, and the thirty-firſt of *January*, 1796, reſpectively, *ſ.* 2.

When reduction of drawback ſhall take place.

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36 *G. III. c.* 15. *An Act for granting to his Majeſty New Duties on certain Horſes, not charged with Duty by any other Act or Acts of Parliament, and on Mules.*

24*th* DECEMBER, 1795.

BY the 36 *G. III. c.* 15. it is enacted, That from and after the fifth of *April*, 1796, there ſhall be raiſed, collected, and paid, throughout *Great Britain*, for the uſe of His Majeſty, &c. for every horſe, mare, or gelding, not charged with any duty by the acts paſſed in the 24th and 29th years of the reign of His preſent Majeſty, or either of them, or by any act to be paſſed in this ſeſſion

From *April* 5, 1796, 2*s.* to be paid annually for every horſe not chargeable under 24 *Geo. III.*

C. 31, or 29 *Geo. III.* C. 49. or by any act of this ſeſſion, and for every mule.

of parliament, on horſes kept and uſed for the purpoſe of riding, or for the purpoſe of drawing any carriage, therein reſpectively mentioned, and for every mule, a duty of two ſhillings; to be paid by the owner, *ſ.* 1.

Duties managed by the commiſſioners for taxes.

It is further enacted, that the duties impoſed by this act ſhall be under the management of the commiſſioners for taxes; and the ſurveyors, &c. under before-mentioned acts, to put this in execution: *ſ.* 2.

Duties to be paid quarterly.

And the aforeſaid duties under this act ſhall be paid quarterly, as follows; *viz.* on the fifth of *January*, the fifth of *April*, the fifth of *July*, and the tenth of *October*, in every year, by equal portions; the firſt payment to be made on the fifth of *July*, 1796. *ſ.* 3.

Aſſeſſors to give notice to the parties to prepare liſts of horſes kept in the year ending the preceding 5th of *April*, liable to the preſent or former duties, and of ſuch as are claimed to be exempted.

And the ſeveral perſons to be appointed aſſeſſors as aforeſaid, ſhall, within fourteen days after ſuch appointment, yearly give or leave notice in writing, to or for every perſon keeping any horſe, mare, or gelding, not charged with any other duty as aforeſaid, or any mule, within the limits of the places for which ſuch aſſeſſors are to act, at his dwelling houſe or place of abode, to prepare and produce, within the ſpace of fourteen days next enſuing the day of giving ſuch notice, one liſt, in writing, which liſt in writing, (beſides the number of horſes, carriages, and ſervants, liable to the duties on horſes, carriages, and ſervants, reſpectively, and of the perſons reſiding or inhabiting in any ſuch dwelling houſe, who ſhall have worn or uſed hair powder), ſhall contain the greateſt number of horſes, mares, and geldings, not charged as aforeſaid, and alſo of mules, of whatever age, and whether in uſe or not, by him had or kept in the courſe of the year, ending on ſuch preceding fifth of *April* as aforeſaid, diſtinguiſhing therein the number of ſuch horſes, mares, geldings, and mules, liable to the duty of two ſhillings hereby impoſed; and the number of horſes kept and uſed by him for riding, or drawing, liable to the ſaid former duties, and upon which additional duties are by any act to be paſſed in this ſeſſion of parliament impoſed, and alſo ſuch horſes, mares, and geldings, as are claimed to be exempted from the ſaid duty by the particular proviſions of this act; and every ſuch perſon ſhall, after ſuch notice ſo given or left, make out the ſaid liſt accordingly, and ſign it with his own hand, and deliver, or cauſe it to be delivered, to ſuch aſſeſſor or aſſeſſors, at any time after the expiration of fourteen days from

Liſts to be ſigned and delivered to the aſſeſſors.

from the ſaid notice being given, when he or they ſhall call for it, or in default thereof, ſhall leave it at the place mentioned in the ſaid notice, as the abode of any of the aſſeſſors, within ten days after ſuch aſſeſſor ſhall have ſo called for it: and if any ſuch perſon ſhall neglect or refuſe to make out, ſign, and deliver, ſuch liſt within the time before-mentioned, then ſuch aſſeſſor ſhall, from the beſt information he can obtain, make an aſſeſſment upon ſuch perſon ſo neglecting, for or in reſpect of every horſe, mare, gelding, or mule, kept by him as aforeſaid; and every ſuch aſſeſſment ſo made upon any ſuch neglect, ſhall be concluſive upon the perſon thereby charged, who ſhall not appeal therefrom, unleſs ſuch perſon ſhall prove that he was not at his dwelling houſe or place of abode at the time of the delivery of ſuch notice, nor between that day and the time limited for delivering ſuch liſt, or unleſs ſuch perſon ſhall allege and prove ſuch other excuſe for not having delivered his liſt as the commiſſioners ſhall think reaſonable and ſufficient. *ſ.* 4.

If liſts be not delivered, the aſſeſſors to aſſeſs the defaulters from the beſt information obtained, which ſhall be final, unleſs in caſe of abſence, &c.

Such aſſeſſors ſhall not be bound by ſuch liſts as ſhall be delivered to them in purſuance of this act, but ſhall be at liberty, if they ſhall find upon examination that any horſe, &c. liable to the duties is omitted, to ſurcharge the ſame, and make a true aſſeſſment upon every perſon within their reſpective diſtricts of the real number of ſuch cattle kept by each ſuch perſon. *ſ.* 5.

Aſſeſſors not to be bound by liſts delivered, but may ſurcharge omiſſions.

And where any perſon liable to deliver ſuch liſt to the aſſeſſor, ſhall refuſe or neglect, within the time hereinbefore preſcribed, to deliver, or cauſe to be delivered, any ſuch liſt to ſuch aſſeſſor, he ſhall, for every ſuch offence, forfeit ten pounds; one moiety to His Majeſty, and the other moiety with coſts of ſuit, to the perſon who ſhall inform or ſue. *ſ.* 6.

Perſons not delivering liſts to aſſeſſors forfeit 10*l.*

In all caſes where any aſſeſſor, &c. ſhall make a ſurcharge upon any perſon, in reſpect of any horſe, &c. omitted to be inſerted in ſuch liſt, ſuch ſurcharge ſhall be made after the rate of double the duty ſo omitted, and the aſſeſſor, &c. ſo making ſuch ſurcharge, ſhall receive for his own uſe, one moiety of the ſum charged by every ſurcharge which ſhall be juſtly made upon any ſuch liſt. *ſ.* 7.

Surcharges for omiſſions to be double the duty, and perſons making them entitled to a moiety.

The duties impoſed by this act to be aſcertained, managed, collected, paid, recovered, and accounted for under ſuch penalties, forfeitures, and diſabilities, as former duties. *ſ.* 8.

Duties aſcertained.

Provided,

Act not to extend to horſes let for hire by licenſed perſons;

Provided, That nothing in this act ſhall extend to charge with the ſaid duties, any horſe, &c. let to hire for travelling poſt by the mile, or from ſtage to ſtage, or let to hire for a day or leſs period of time, by any poſtmaſter, or other perſon licenſed for that purpoſe by the commiſſioners appointed to manage the duties charged on ſtamped vellum, parchment, and paper. *ſ.* 9.

nor to horſes under 13 hands, or not having been ridden, or uſed for draught.

Provided alſo, That nothing in this act ſhall extend to any horſe, &c. under the height of thirteen hands, nor to any horſe, &c. which ſhall not at any time whatever, preceding the time of making the aſſeſſment for that year, have been ridden, or uſed as a draught horſe, or for the purpoſe of carrying any burthen, and of which horſes, mares, or geldings, an account ſhall be given as herein is mentioned, at the time of the delivery of liſts of horſes liable to the ſaid duties. *ſ.* 10.

Horſes for whom exemption is claimed to be included in liſt, and on demand to be produced for examination; and if not produced, or if found not to be exempted, the owner to be ſurcharged double the duty.

Every horſe, mare, or gelding, notwithſtanding any claim of exemption from the duty by virtue of this act, ſhall be enumerated and included in the liſts of the number of horſes kept by any perſon, and required to be made and returned annually, as herein mentioned, under the title of horſes exempted from duty; and the owner thereof ſhall, upon demand made, produce ſuch horſe, &c. to the aſſeſſor, ſurveyor, or inſpector of the ſaid duty, or at any meeting of the commiſſioners for putting the ſeveral acts relative to the ſeveral duties on horſes, in execution, to be admeaſured or otherwiſe examined, as the caſe may require, reſpecting the particulars before-mentioned; and if the owner ſhall neglect or refuſe, on demand being made, to produce ſuch horſe, &c. for which ſuch exemption ſhall be claimed to the aſſeſſor, ſurveyor, or inſpector of the ſaid rate or duty, or to the ſaid commiſſioners, to be admeaſured or examined as the caſe may require, or if upon ſuch examination, ſuch horſe, &c. ſhall not be found to be within the particular exemption claimed, every ſuch owner ſhall be ſurcharged with double the ſaid duty, and ſhall not be relieved from ſuch ſurcharge, or any part thereof, unleſs it ſhall be made appear to the ſaid commiſſioners, by examination on oath, on appeal before them, that ſuch horſe, &c. for which ſuch exemption is claimed, was duly inſerted in the liſt delivered of horſes kept by ſuch owner, according to the directions of this act, and that ſuch owner ought not to

have

have been rated for such horse, &c. within the intent and meaning of this act. *s.* 11.

All monies arising by the said rates and duties (the necessary charges excepted) shall be paid into the receipt of His Majesty's exchequer, and made part of the consolidated fund. *s.* 12. Duties to be carried to the consolidated fund.

Monies arising from the said duties to be applied in defraying any increased charge occasioned by any loan of this session, and for ten years, with other duties granted for the same purpose, kept separate from other monies. *s.* 13. How to be applied.

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35 *G. III. c.* 102, *An Act for the more effectual Prevention of the Use of defective Weights, and of false and unequal Balances.*

BY the 35 *G. III. c.* 102. it is enacted, that from and after 22d. *June* 1795, it shall be lawful for the justices, at every quarter sessions of the peace to be held for any county, riding, liberty, or division, in *England* or *Wales*, and they are thereby required to appoint one or more persons to examine the weights and balances within their respective counties and divisions, such person so to be appointed to be the high constable of a hundred, who shall have the power of examining within his hundred; or the constable and parish officers of a parish, who shall have the like power within their parish; or such other proper persons as the said justices shall in their discretion think fit, who shall have a power of examining within such district as such justices shall appoint. *s.* 1. Quarter sessions to appoint persons to examine weights and balances.

And it shall be lawful for the persons so appointed, and they are (having first been sworn duly and faithfully to execute the office in them reposed, by virtue of such appointment and of this act, which oath the said justices are to administer), *once in every month at the least*, in the day time, to enter into the shop, house, outhouses, and other premises near to such shop or house; and into the stall or standing place of every person who shall sell or retail by weight, any wares, provisions, goods, or chattels whatsoever, and then and there to search for, view, and examine, all weights and balances, and to seize any weight not being according to the standard in the *Exchequer*, or any false or unequal balance which shall upon such search be found, and forthwith to break and destroy Persons so appointed, to visit shops, &c. and seize false weights, &c.

the

Penalty for having falſe weights, &c.

the ſame; and the perſon in whoſe ſhop, houſe, out-houſes, premiſes, ſtall, or ſtanding place, any ſuch weight or balance ſhall be found, ſhall, upon conviction thereof before one juſtice, upon view or confeſſion, or upon the oath of one witneſs, forfeit not exceeding twenty, nor leſs than five ſhillings, to be levied by warrant of the ſaid juſtice, by diſtreſs and ſale, and to be paid to the treaſurer of the county or diviſion, to be by him applied towards the expences of carrying this act into execution, and the reſidue (if any) in aid of the general county rate. *ſ.* 2.

Penalty for obſtructing inſpectors, or refuſing to produce weights, &c.

And if any perſon ſhall wilfully obſtruct, hinder, reſiſt, or in any wiſe oppoſe, any of the perſons hereby authoriſed to view and examine ſuch weights and balances, in the execution of his office, or if any perſon ſelling or retailing by weight ſhall refuſe to produce his weights and balances in order to be viewed and examined, he ſhall, for every ſuch offence, on being duly convicted on oath, before one juſtice, forfeit not exceeding forty, nor leſs than five ſhillings, and ſuch forfeiture ſhall be levied and applied as before directed. *ſ.* 3.

Quarter ſeſſions to allow a recompence to the inſpectors out of the county rate.

It ſhall be lawful for the juſtices, at their ſaid quarter ſeſſions, to allow to ſuch perſons who ſhall be appointed to examine weights and balances under this act, a reaſonable ſatisfaction for their trouble, to be paid out of the general county rate. *ſ.* 4.

Perſons puniſhed under this act not to ſuffer by any other.

Perſons convicted under this act, ſhall not be otherwiſe puniſhed by virtue of any other law. *ſ.* 5.

Act not to leſſen the authority of perſons appointed at court leets.

Nothing in this act ſhall leſſen the authority which any perſon or perſons, bodies politic or corporate, or any perſon appointed at any court leet for any hundred or manor, may have, for the examining, regulating, ſeizing, breaking, or deſtroying, any weights or balances within their juriſdictions. *ſ.* 6.

Public act.

This act ſhall be deemed a public act. *ſ.* 9.

ROBINSON *v.* DRYBROUGH. *Tr.* 35 *G. III.*

Stamps muſt be ſpecific as required by the ſtatutes.

NO inſtrument directed by law to be ſtamped can be given in evidence, unleſs it has the ſpecific ſtamp which the ſtatute requires: and although it may have a ſtamp of the ſame value, it is inſufficient. This was decided in *Robinſon* v *Drybrough*, *Tr.* 35 *Geo. III.* which was as follows:

lows:—The plaintiff declared upon articles of agreement under ſeal, whereby the defendant had agreed to purchaſe of him a leaſe of certain premiſes, and aſſigned for breach that the defendant had refuſed to purchaſe. *At the trial it appeared, that the deed when executed had no ſtamp affixed on it; but when it was produced at the trial, it was ſtamped with a 6s. agreement ſtamp.*—OBJECTION was taken that *this was not a proper ſtamp for a deed, though of the ſame value.* And it was agreed, that a verdict ſhould be taken for the plaintiff, with liberty for the defendant to enter a nonſuit, in caſe the court ſhould be of that opinion. By lord Kenyon Ch. J. (after argument). I don't ſee how we can get over the objection of the ſtamp: it is abſolutely neceſſary, that the diſtinction of the ſeveral ſtamps ſhould be preſerved in courts of juſtice as long as that diſtinction is kept up by the legiſlature; and indeed it has often proved the means of detecting forgeries, by comparing the ſtamps on forged inſtruments with thoſe in uſe at the time. By the court, *Judgment of nonſuit to be entered.* 6 *Durnf. and Eaſt*, 317.

A TABLE OF THE ADDITIONAL STAMP DUTIES IMPOSED IN THE YEAR 1795.

ADMINISTRATION.—By 35 *Geo. III. c.* 30. *ſ.* 1. there ſhall be paid for every probate of a will or letters of adminiſtration *for any eſtate of or above the value of* 1000*l. a farther additional duty of* 2*l.* 10*s.* TOTAL (including the former duty of 11*l.* 10*s.*) — — 14*l.* Adminiſtration.

For any eſtate of or above the value of 2000*l. an additional duty of* 5*l.* TOTAL (including the former duty of 15*l.*) 20*l.*

For any eſtate of or above the value of 5000*l. an additional duty of* 10*l.* TOTAL (including the former duty of 20*l.*) 30*l.*

For any eſtate of or above the value of 10,000*l. an additional duty of* 20*l.* TOTAL (including the former duty of 20*l.*) — — — — 40*l.*

AFFIDAVITS.—By 35 *Geo. III. c.* 30. *ſ.* 1. there ſhall be paid for every affidavit in the courts of law or equity at *Weſtminſter*, or courts of the great ſeſſions in *Wales*, or court of the county palatine of *Cheſter*, or any copy thereof, an additional 6*d.* TOTAL (including the former duty of 1*s.* 6*d.*) *two ſhillings.* Affidavits.

AGREEMENTS.—By 35 *Geo. III. c.* 30. *ſ.* 1. there ſhall be paid for every agreement, for which a duty of 6*s.* is payable Agreements.

payable by 23 *Geo. III. c.* 58. an additional duty of 1*s.* TOTAL now *ſeven ſhillings.*

Bills and notes. BILLS OF EXCHANGE AND PROMISSORY NOTES.—By 35 *Geo. III. c.* 94. no order bill, remittance bill, or certificate, for the payment of pay, penſion, or bounty in the navy, nor any bills of what nature or deſcription ſoever, drawn purſuant to any former act by the commiſſioners of the navy, or by the commiſſioners for victualling the navy, or by the commiſſioners for taking care of ſick and wounded ſeamen, or by the commiſſioners for managing the tranſport ſervice, upon the treaſurer of the navy, ſhall be ſubject to any ſtamp duty. Neither ſhall the perſon receiving payment thereof be obliged to give a ſtamped receipt for the ſame. *ſ.* 31, 32.

Bonds. BONDS.—By 35 *Geo. III. c.* 30. *ſ.* 3. the exemption in ſtat. 23 *Geo. III. c.* 58. relating to bonds given as a ſecurity for the payment of any money amounting to 100*l.* or any leſs ſum, is repealed.

The duty upon ſuch bonds is therefore now as follows: By 5 *Will.* and *Mar. c.* 21. *ſ.* 3, (6*d.*)—9 and 10 *Will. III. c.* 25. *ſ.* 57, (6*d.*)—12 *Ann. ſtat.* 2. *c.* 9. *ſ.* 21, (6*d.*)—30 *Geo. II. c.* 19. *ſ.* 1, (1*s.*)—16 *Geo. III. c.* 34. *ſ.* 5, (1*s.*)—17 *Geo. III. c.* 50. *ſ.* 16, (1*s.* 6*d.*)—23 *Geo. III. c.* 58. *ſ.* 1, *and* 35 *Geo. III. c.* 30. *ſ.* 3, (1*s.*)—35 *Geo. III. c.* 30. *ſ.* 1, (1*s.*)—TOTAL, 7*s.*

Deeds. DEEDS.—By 35 *G. III. c.* 30. *ſ.* 1, there ſhall be paid for every indenture, leaſe, bond, or deed-poll; and every charter party, releaſe, contract, or other obligatory inſtrument, or any procuration or letter of attorney, an additional duty of 1*s.* TOTAL, with the former duty of 6*s.* thereon, *ſeven ſhillings.*

Hair powder. HAIR POWDER.—By 35 *Geo. III. c.* 49, there ſhall be paid the ſtamp duty following, viz. *Every perſon who ſhall uſe or wear any powder commonly called* hair powder, *of whatever materials the ſame ſhall be made, ſhall previouſly enter his name and abode, and annually take out a certificate thereof; and upon every ſuch certificate there ſhall be charged a ſtamp duty of one pound and one ſhilling. ſ.* 1.

And every ſort of compoſition or powder which ſhall be uſed or worn by any perſon as an article of dreſs, by whatever name the ſame ſhall be diſtinguiſhed, ſhall be deemed hair powder. *ſ.* 2.

Exemptions. But nothing in this act ſhall extend to any of the royal family, or to any of the immediate ſervants of his majeſty,

or

or any of the royal family ſerving in any of the capacities enumerated in the act impoſing a duty on ſervants. *ſ.* 3.

Alſo, nothing in this act ſhall charge any clergyman who ſhall not be poſſeſſed of an annual income of one hundred pounds, whether ariſing from eccleſiaſtical preferment or otherwiſe; nor any preacher of any congregation of diſſenters, or any perſon diſſenting from the church of *England* in holy orders, or pretended holy orders, who is entitled to the benefit of either of the ſtatutes 1 *Will.* and *Mar. c.* 18, and 19 *Geo. III. c.* 44. *for the relief of proteſtant diſſenters;* or of the ſtat. 31 *Geo. III. c.* 32, *for the relief of papiſts*, and who ſhall not be poſſeſſed of an annual income of one hundred pounds, or upwards, however ariſing. *ſ.* 4. 7.

Neither ſhall this act charge any ſubaltern or non-commiſſioned officer, or private man, belonging to any regiment in the army, artillery, militia, diviſion of marines, corps of engineers, or fencible corps; nor any officer employed in his majeſty's navy under the rank of commander. *ſ.* 4.

Alſo, nothing in this act ſhall charge any officer or private man in any corps of yeomanry or volunteers, either cavalry or infantry, who ſhall voluntarily enrol themſelves for the defence of their counties, towns, or coaſts, or for the general defence of the kingdom during the preſent war. *ſ.* 5.

Alſo, any perſon who ſhall have more than two daughters unmarried, ſhall be at liberty, on paying the duty for two, to receive a certificate for the whole number. *ſ.* 6.

But, if in any action, ſuit, information, or proſecution, againſt any perſon for non-payment of the duty, any diſpute ſhall ariſe whether ſuch perſon is exempted, the proof thereof ſhall lie upon the perſon claiming ſuch exemption, who may be permitted to allege the ſame on his oath or affirmation, or other ſufficient evidence. *ſ.* 30.

And if ſuch perſon ſhall be a beneficed clergyman, the income ariſing from his benefice ſhall be eſtimated on the average amount thereof as nearly as the ſame can be aſcertained, computed on the period of ſeven years next preceding the proſecution. *ſ.* 30.

FULLER *v.* OSBORNE, *Mich.* 36. *G. III.*

TO an action of aſſumpſit the defendant pleaded the general iſſue as to all except 2*l.* 8*s.* 9*d.* and a tender as to that. Judgment cannot be ſigned in

any case for non-payment of the issue money.

that. The plaintiff delivered the paper book with notice of trial for the last Hertford assizes, and the defendant returned it on the 6th of July, within the time limited. On the 10th of July the plaintiff signed judgment, because the defendant had not paid his share of the paper book when he returned it.

The defendant obtained a rule in this term to shew cause why the judgment should not be set aside for irregularity; and the only question was, whether this case came within the rule of the court made in the last Hilary Term, "That no judgment should be signed for non-payment of issue money, but that the issue money should remain to be taxed as part of the costs in the cause." For the plaintiff it was argued that it was confined to cases where the general issue was pleaded, and did not extend to a case where only part of the issue money was to be paid, as in this case, a special plea being pleaded. For the defendant it was insisted that the rule was general, without distinguishing between those cases where the whole, and those where only a part of the issue money was to be paid on returning the paper book.

The court took time to consider of this case; and now, KENYON, L. C. J. said—We have had a conference with the judges of the Court of Common Pleas; and they all agree with us in thinking that the rule lately established here, and which has been adopted in that court, ought to be general. Therefore this rule must be made absolute. 6 *Durnf.* & *East.* 477.

K. *v.* MAST. *Hil.* 35 *G. III.*

The poor rate must be made for the full value of the premises, with all its improvements.

The occupier of a house, or of an estate, ought to be rated according to its full value with all its improvements, and not according to the price which he may have paid for it, without taking into the account the value of the improvements. This was decided in the case of the *K.* v. *Mast*, *Hil.* 35 *Geo. III*, where lord Kenyon Ch. J. delivered himself to the following effect: The assessment for the relief of the poor ought to be so contrived, that each inhabitant should contribute in proportion to his ability, which is to be ascertained by his possessions in the parish. *Every inhabitant ought to be rated according to the present value of his estate, whether it continue of the same value as when he purchased it, or whether the estate be rendered more valuable by the improvements which he has made upon it.*—

If

If a perſon chooſe to keep his property in money, and the fact of his poſſeſſing it be clearly proved, he is rateable for that; but if he prefer uſing it in the melioration of an eſtate or other property, he is rateable for the ſame in another ſhape. Suppoſe a perſon has a ſmall piece of land in the heart of a town, which is only of ſmall value, and he afterwards build on it, he muſt be rated to the poor according to its improved value with the building upon the land. In ſhort, in whatever way the owner makes his eſtate more valuable, he is liable to contribute to the relief of the poor in proportion to that improved eſtate. *Aſhhurſt* J. and *Groſe* J. concurred. 6 *Durnf. & Eaſt.* 154.

Lacon *v.* Hooper, *E.* 35 *G. III.*

Time of impriſonment under penal ſtatutes are to be *lunar* months, unleſs *calendar* months are particularly expreſſed.

IF the recovery of a forfeiture under a penal ſtatute, or the time of impriſonment for non-payment thereof, be limited to one or more *months*, without expreſſing that the ſame ſhall be *calendar* months, the time ſo limited muſt be computed according to *lunar months* of 28 days each, and not according to the *calendar months* in our common almanack. Therefore, if a ſtatute limits either a proſecution, or term of impriſonment to *twelve months* in the plural number, this is to be intended only 48 weeks; but if it expreſſes *a twelvemonth* in the ſingular number, this is to be conſidered *a whole year;* it being generally underſtood, that by the ſpace of time called thus in the ſingular number *a twelvemonth*, is meant a whole calendar year.

This mode of computation was conſidered and aſſented to by the court, in the caſe of *Lacon and others*, v. *Hooper and others*, *Ea.* 35 *G. III.* where lord Kenyou, C. J. expreſſed himſelf as follows: I confeſs I wiſh that when the rule was firſt eſtabliſhed, it had been decided that *months* ſhould be underſtood to mean *calendar* and not *lunar* months; but the contrary has been determined ſo long and ſo frequently, that it ought not again to be brought in queſtion. It is now *clearly ſettled*, that in all acts of parliament where *months* are ſpoken of, without the word *calendar*, and nothing is added from which a clear inference can be drawn that the legiſlature intended *calendar* months, it is underſtood to mean *lunar* months. 6 *Durnf. & Eaſt*, 226.

K. v.

K. v. T. Pack, Tr. 35 G. III.

Drying hops with ſulphur incurs a penalty of 5*l.* for every hundred weight.

BY the ſtat. 7 *Geo. II. c.* 19. *ſ.* 2. it is enacted, that if any perſon ſhall mix with or put into any quantity of hops, any drug or ingredient, or other thing whatſoever, to alter the colour or ſcent, ſuch perſon ſhall forfeit 5*l.* for every cwt.

In the caſe of the *K.* v. *T. Pack*, *Tr.* 35 *Geo. III.* it was determined, that the mixing the vapour of ſulphur and brimſtone with hops, while drying, is an offence within the meaning of the above ſtatute.—The caſe was as follows: The defendant was convicted in the penalty of 5*l.* upon evidence, that *he put in the fire, by which one hundred weight of hops were dried, a quantity of ſulphur and brimſtone to alter the colour of the hops, the vapour and fume of which ſulphur and brimſtone aſcended to the hops placed over ſuch fire, and the hops being then in a moiſt ſtate, ſuch fume and vapour ſettled and fixed on the hops, and mixed with the ſame, whereby the colour thereof was changed, and the hops appeared brighter than they would have done, if they had not been ſo mixed with the fume and vapour of brimſtone.* Againſt this conviction, after ſtating that this was the univerſal mode of drying hops throughout the kingdom, and was conſidered by the hop merchants even as an improvement of the hops, it was contended, that it was not an offence within the meaning of the above ſtatute, the mere vapour of ſulphur and brimſtone not being either a drug or an ingredient within the words or the ſpirit of the act. But THE COURT were clearly of opinion, that this is an offence within the act; for by lord Kenyon Ch. J. by the aſcending of the vapour, the particles of the brimſtone become mixed with the hops. If it be true, as has been ſuggeſted, that the mixing of this vapour is an amelioration inſtead of deterioration of the commodity, application muſt be made to the legiſlature to amend the act, but as long as it remains in the ſtatute-book, we muſt enforce it. Conviction affirmed. 6 *Durnf. & Eaſt.* 374.

REVIEW

REVIEW OF LAW BOOKS.

The Whole Law relative to the Duty and Office of a Juſtice of the Peace. Compriſing alſo the Authority of Pariſh Officers. By Thomas Walter Williams, Eſq. of the Inner Temple, Barriſter at Law. Vol. V. Part 1. 8vo. 3*s.* Robinſons, 1795.

EVERY ſeſſion produces new Acts of Parliament which are eſſentially neceſſary to be conſulted by magiſtrates of every denomination; and the frequent deciſions in our law courts, eſpecially reſpecting Pariſh Law, have almoſt an equal claim to their attention. Convinced of this important truth, and that his original work for the uſe of Juſtices of the Peace, in four volumes, 8vo. would often require a ſupplement to render it perfect, Mr. Williams has publiſhed this continuation, accompanied with a declaration, that he will annually bring his work down to the period of every ſuch annual publication.

Had Mr. Williams conſulted merely his own intereſt, he would have contented himſelf with making the neceſſary additions on the publication of every new edition; the conſequence would have been, that many of the original purchaſers would have found it neceſſary to buy the *whole* again, inſtead of the continuation only. This plan was ſucceſsfully adopted by his predeceſſor in the ſame walk: the author, therefore, deſerves the thanks of the public for apparently ſacrificing a great portion of his emoluments to their accommodation.

The matter contained in this ſupplement, like the original work, is well arranged and digeſted.

The Law of Wills, Codicils, and Revocations. With plain and familiar Inſtructions for Executors, Adminiſtrators, Deviſees, and Legatees; including great variety of Forms of Wills and Codicils, adapted to the Circumſtances of Perſons of all Ranks and Situations, who would wiſh to deviſe or bequeath their Property legally and ſecurely, and prevent vexatious Law-ſuits among their ſurviving Relatives and Friends. To which is added, a clear and diſtinct Account of the Law's Diſpoſal of the Eſtates of thoſe who die inteſtate, or without a Will. With ample Inſtructions for obtaining Probate of Wills, and Letters of Adminiſtration. By Eardley Mitford, Eſq. Conveyancer, 2*s.* 6*d.* Stratfords, 1796.

THIS is a judicious and well-digeſted compilation, and will be found an uſeful monitor to thoſe who may have occaſion to conſult it. The ſubjects on which it treats are indeed of ſo general a nature, that almoſt every individual may ſometimes find it neceſſary to conſult it.

The following ſenſible Preface introduces this little Volume to the reader. "It is a melancholy truth, that the improper penning or execution of wills creates a multiplicity of ſuits in the courts at Weſtminſter Hall: That this ſhould be the caſe cannot be matter of ſurprize, when it is conſidered, that many perſons who have very aſſiduouſly and carefully laboured to accumulate wealth, have neglected, almoſt to the laſt moment of their exiſtence, to attend to the proper diſpoſal of it. When a ſpeedy diſſolution is pronounced inevitable by the phyſician, the diſmayed patient perhaps thinks ſeriouſly of making his will, and if his life is not too ſuddenly terminated, it is then prepared and executed; but, on account of the extreme haſte in which it has been produced, ſome of the neceſſary forms may have been omitted; or inſurmountable blunders may have been committed, which open a field of litigation for his ſurviving relatives or friends.

"Prudent perſons will not put off ſo eſſential a buſineſs as that of making their will, till death ſhall direct his irrevocable ſhaft; they will conſider that fatal bodily diſorders too often affect and impair the underſtanding; and though, according to the common acceptation of the terms, they may be *of ſound and diſpoſing mind, &c.* they certainly will be leſs able to diſpoſe of their property in the hurry and confuſion of expiring life, than when compoſed in the calm moments of health and deliberation.

"Though moſt men are anxious to acquire wealth, they are in general extremely ignorant with regard to the law of wills: they know not that a will and a deed have, in ſome caſes, a different operation; and that "if there are two clauſes in a will ſo totally repugnant to each other that they cannot ſtand together, the *latter* ſhall be received, and the *former* rejected; wherein it differs from a deed; for there, of two repugnant clauſes the *former* ſhall ſtand; which is owing to the different natures of the two inſtruments; for the *laſt will* and the *firſt deed* is always moſt available in law." This ſingle inſtance, it is preſumed, will ſufficiently point out the neceſſity of acquiring a competent knowledge of the Law of Wills; it

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is a duty incumbent on thoſe poſſeſſed of property, to learn, like faithful ſtewards, how to diſpoſe of that property legally, and to the proper objects.

"That wealthy perſons ought always to have a will by them duly made and executed, cannot be conteſted: without that neceſſary ſtep, their conduct is highly criminal; as Death may ſurpriſe them in a moment, and deprive them of the ability to do that juſtice which the laws of God and Man require of them. The Editor, he humbly hopes, has given ſuch inſtructions, in the following ſheets, as will enable his intelligent readers to know and perform what ſo eſſentially concerns them."

As a ſpecimen of the author's compoſition and arrangement, we ſhall extract ſome of his obſervations and inſtructions reſpecting Codicils:

"A codicil, (ſays he) is a ſupplement to a will, or an addition made by the teſtator annexed to and to be taken as part of a teſtament; being for its explanation or alteration, or to make ſome addition to, or ſubtraction from the former diſpoſitions of the teſtator. Definition of a codicil.

"An executor cannot regularly be appointed by a codicil, yet he may be ſubſtituted, according to the will of the teſtator.

"A man may make divers codicils, and the firſt is of equal force with the laſt, if not contradictory to each other. *Godolph.* 1. *Swinb.* 14, 15.

"The law relating to codicils agrees in general with that which relates to wills and teſtaments; like thoſe it may be either written or verbal; and where it is uſed, for the purpoſe of deviſing *real eſtates*, it requires the ſame ceremonies to attend its execution as an original *deviſe*; and the ſame latitude is admitted in its form and publication, when its object is the diſpoſition of *perſonal property* only, as is allowed in an original *teſtament*. In ſome reſpects, however, they differ; for though a man can regularly make but one will or teſtament, he may make codicils without number, and unleſs contradictory to one another they will all ſtand. *Swinb.* 15. Codicils to be executed with the ſame ceremony as wills.

"If codicils are regularly executed and witneſſed, they may be proved as wills, and ſo if they are found written by the teſtator himſelf, they ought to be taken as part of the will, as to the perſonal eſtate, and proved in common form by witneſſes, to be the hand-writing of the perſon Codicils may be proved as wills.

making the codicil, and by giving an account when, where, and how the ſame was found.

Two codicils diſagreeing.

"Where a teſtator leaves two wills, and it is uncertain for want of dates, which was laſt made, they will both be void; but if the ſame thing happens in reſpects of two codicils, and the ſame thing is given by one codicil to one man, and by another codicil to another, they ſhall divide the thing between them. *Swinb. Ib.*

"Whenever a codicil is added to a will or teſtament, and the teſtator declares that the will ſhall be in force, in ſuch caſe if the will happens to be void for want of the forms required by law in the execution, or otherwiſe, yet it ſhall be as good as a codicil, and ſhall be obſerved by the adminiſtrator.

"And where there are two wills of different dates, the firſt is void; but a former codicil will be void only ſo far as it is contradicted by the latter. *Ibid.*

"So again where two legacies are given to the ſame perſon, one in the former and the other in the latter part of the ſame will, he ſhall take only one of them; whereas, if they are given him by two codicils, or by a will and a codicil, they will both be effectual. And the reaſon of this diſtinction is founded on the principle of a codicil's being a *ſupplement* to the will; the eſſential nature of which is (unleſs otherwiſe expreſſed) to add to what has gone before."

We are ſo well pleaſed with this performance, that we wiſh the author had undertaken it on a larger ſcale; at the ſame time we muſt admit that, conciſe as it is, it is ſufficiently copious for general information, and may be conſulted with advantage by adepts in legal ſcience. Thoſe who are not practiſers of the law will obtain every eſſential information from it; for perſons who may happen to become Executors, Adminiſtrators, Deviſees, or Legatees, as well as thoſe who think ſeriouſly of deviſing, or bequeathing their property by will, will find an able and faithful counſellor in theſe pages.

The Index to this treatiſe, contrary to the uſual cuſtom, is placed at the beginning inſtead of the end of it. Whether this is an improvement or not, we will not take upon us to decide.

36 *G. III. c.* 22. *An Act to permit Bakers to make and sell certain Sorts of Bread.*

24*th* DECEMBER, 1795.

Preamble.

WHEREAS it is expedient, in order to diminish the consumption of wheat, that bakers should be permitted to make and sell, various kinds of mixed bread, &c. it is therefore enacted, That, from and after the passing of this Act, it shall be lawful for any person whatsoever, in any place whatsoever, and whether any assize of bread shall be set in such place or not, to make, sell, and expose to sale, peck loaves, half peck loaves, quartern loaves, and half quartern loaves, made of the whole produce of the wheat, deducting only five pound weight of bran *per* bushel, or made of any sort of wheaten flour, mixed with meal or flour of barley, rye, oats, buckwheat, *Indian* corn, pease, beans, rice, or any other kind of grain whatsoever, or with potatoes, in such proportions, and at such prices for the said loaves, respectively, as the maker and seller thereof shall deem proper and reasonable; any law, custom, or usage, to the contrary notwithstanding, *s.* 1.

Loaves may be made of Wheat, or mixed with any grain or potatoes, and sold at such prices as shall be reasonable.

And every person who shall make, sell, or expose to sale, any loaves of mixed bread as aforesaid, shall cause to be fairly imprinted on every loaf of each respective sort of bread, which he shall make, sell, or expose to sale, a mark, in large roman letters, denoting what are the sorts and proportions of such mixtures, or a large Roman M, together with some mark distinguishing one sort of such bread from another; and shall also affix in some conspicuous part of his shop, or in the window thereof, a paper, written in large and legible characters at length, specifying the sorts and proportions of the mixtures composing each sort of bread, and the marks corresponding to each sort, and the respective prices. *s.* 2.

Mixed bread to be marked, to distinguish the sorts, &c.

And if any such peck loaves, half peck loaves, quartern loaves, or half quartern loaves, shall be deficient in weight, according to the assize of loaves of such denominations respectively, prescribed in an act, passed in the thirty-first of *George* the second, intituled, *An act for the due making of bread, and to regulate the price and assize thereof, &c.* or if any such mixed loaves, shall not be imprinted with

If bread be deficient in weight, or be not marked, or have any mixture not denoted by the mark, &c. the of-

Offender liable to the penalties of 31 *G. II.*

marks pursuant to the directions of this act, and corresponding to the paper herein required to be affixed, or if it shall have any mixture of meal or flour of any other sort, or in any other proportions thereof than shall be denoted by such marks thereon, or any mixture or article in lieu of flour which shall not really be the genuine flour or article the same shall import to be, or if the same shall have in them any allum, or preparation or mixture in which allum shall be an ingredient, or if any other mixture whatsoever (except only the genuine meal or flour, or article of which the same purports to be made, and common salt, pure water, eggs, milk, yeast, and barm, or such other leaven as shall be allowed to be put into bread by the court, or person who shall have set an assize of bread for the place where such leaven shall be used; and where no such assize shall be set, then such other leaven as any magistrate, within his jurisdiction, shall allow to be used in making of bread), shall be put into, or used in making the dough whereof, or as leaven to ferment any such dough, or on any other account, under any pretence whatsoever; every person offending therein shall be liable to the same penalties and forfeitures, to be recovered and applied in the same manner as is provided in the said act, in the case of any of the aforesaid offences being committed against the provisions in that behalf made in the said act. *s.* 3.

This act may be altered.

It shall be lawful to alter or repeal this act, or any part, during the present session of parliament. *s.* 4.

Act not to affect the rights of *London.*

Nothing in this act shall affect the rights and privileges of the city of *London*, or of the worshipful company of bakers of that city. *s.* 5.

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35 *G. III. c.* 101. *Act respecting the removal of Persons liable to become chargeable to any Parish.*

THE stat. 35 *Geo. III. c.* 101, after taking notice that two justices of the peace (1 *Qu.*) have authority to remove persons that are *likely to become* chargeable to any parish, to the place of their last legal settlement, states, that *many industrious poor persons, chargeable to the parish, township, or place, where they live, merely from want of work there, would in any other place, where sufficient employment is to be had, maintain themselves and families without being burdensome to any parish, township, or place; and such poor persons are for the*

the moſt part compelled to live in their own pariſhes, townſhips, or places, and are not permitted to inhabit elſewhere, under pretence that they are likely to become chargeable to the pariſh, townſhip, or place, into which they go for the purpoſe of getting employment, although the labour of ſuch poor perſons might, in many inſtances, be very beneficial to ſuch pariſh, townſhip, or place: and that the remedy *intended to be applied thereto, by the granting of certificates*, hath been found very ineffectual: It is, for remedy thereof, THEREFORE ENACTED by the ſaid ſtat. 35 *Geo. III. c.* 101, that SO MUCH OF THE STAT. 13 and 14 *C. II. c.* 12. AS ENABLES THE JUSTICES TO REMOVE ANY PERSON LIKELY TO BE CHARGEABLE TO THE PARISH, TOWNSHIP, OR PLACE, INTO WHICH THEY SHALL COME TO INHABIT, SHALL BE REPEALED. *ſ.* 1.

Part of 13 and 14 *C. II.* c. 12. repealed.

And from henceforth no perſon ſhall be removed by virtue of any order of removal, from the pariſh or place where ſuch poor perſon ſhall be inhabiting, to the place of his laſt legal ſettlement, UNTIL SUCH PERSON SHALL HAVE BECOME ACTUALLY CHARGEABLE to the pariſh, townſhip, or place, in which he ſhall then inhabit; in which caſe, two juſtices of the peace may remove him, in the ſame manner, and ſubject to the ſame appeal, and with the ſame powers, as might have been done before this act with reſpect to perſons LIKELY TO BECOME CHARGEABLE. *ſ.* 1.

No perſons to be removed till they become chargeable.

But every perſon who ſhall have been convicted of larceny, or any other felony, or who by the laws now in being ſhall be deemed a rogue, vagabond, idle, or diſorderly perſon, or who ſhall appear to any two juſtices of the diviſion wherein ſuch perſon ſhall reſide, upon the oath of one witneſs, to be a perſon of evil fame, or a reputed thief, ſuch perſon not being able to give a ſatisfactory account of himſelf, or of his way of living, ſhall be conſidered as a perſon actually chargeable within the meaning of this act, to the pariſh in which ſuch perſon ſhall reſide, and ſhall be liable to be removed to his laſt ſettlement by order of the ſaid juſtices, one to be of the quorum, of the diviſion where any ſuch perſon ſhall reſide. *ſ.* 5.

Perſons convicted of larceny, *&c.* to be chargeable, and may be removed.

Alſo every unmarried woman with child ſhall be deemed to be a perſon actually chargeable, within the meaning of this act, and may be removed to the place of her laſt legal ſettlement. *ſ.* 6.

Unmarried women with child chargeable.

But

Juſtices may ſuſpend the removal of ſick perſons.

But as poor perſons are often removed during the time of their ſickneſs, to the great danger of their lives; it is for remedy thereof ENACTED, that in caſe any poor perſon ſhall be brought before any juſtice of the peace, for the purpoſe of being removed from the place where he or ſhe is inhabiting, by virtue of any order of removal, and it ſhall appear to the ſaid juſtices that ſuch poor perſon is unable to travel, by reaſon of ſickneſs or other infirmity, or that it would be dangerous for him or her ſo to do, the juſtices making ſuch order of removal, are required and authoriſed to ſuſpend the execution of the ſame, until they are ſatisfied that it may ſafely be executed, without danger to any perſon who is the ſubject thereof; which ſuſpenſion of, and ſubſequent permiſſion to execute the ſame, ſhall be reſpectively indorſed on the ſaid order of removal, and ſigned by ſuch juſtices. *ſ.* 2.

But no act done by any ſuch poor perſon continuing to reſide in any pariſh, townſhip, or place, under the ſuſpenſion of any ſuch order, ſhall be effectual, either in the whole or in part, for the purpoſe of giving him a ſettlement in the ſame. *ſ.* 2.

Alſo if any order of removal obtained for the removal of any unmarried woman with child ſhall be ſuſpended for any of the reaſons before mentioned, and during ſuch ſuſpenſion the ſaid woman ſhall be delivered of any child which by the laws of this kingdom ſhall be a baſtard, every ſuch baſtard child ſhall be deemed to be ſettled in the ſame pariſh, townſhip, or place, in which was the legal ſettlement of the mother at the time of her delivery. *ſ.* 6.

Charges of ſuſpenſion to be paid by the pariſh.

And the charges proved upon oath to have been incurred by ſuch ſuſpenſion of any order of removal, may by the ſaid juſtices be directed to be paid by the churchwardens and overſeers of the pariſh or place to which ſuch poor perſon is ordered to be removed, in caſe any removal ſhall take place, or in caſe of the death of ſuch poor perſon before the execution of ſuch order. *ſ.* 2.

And if the churchwardens or overſeers of the pariſh, townſhip, or place, to which the order of removal ſhall be made, or any or either of them, ſhall upon the removal or death of ſuch poor perſon ordered to be removed, refuſe or neglect to pay the ſaid charges within three days after demand thereof, and ſhall not within the ſame time give notice of appeal as herein-after mentioned, it ſhall be lawful

lawful for one juſtice, by warrant under his hand and ſeal, to cauſe the money mentioned in ſuch order to be levied by diſtreſs and ſale of the goods and chattels of the perſon or perſons ſo refuſing or neglecting payment of the ſame, and alſo ſuch coſts attending the ſame, not exceeding forty ſhillings, as ſuch juſtice ſhall direct; and if the pariſh, townſhip, or place, to which the removal is made, or was ordered to be made, before the death of ſuch perſon as aforeſaid, be without the juriſdiction of the juſtice iſſuing the warrant, then ſuch warrant ſhall be tranſmitted to any juſtice having juriſdiction within ſuch pariſh, townſhip, or place, who upon receipt thereof is to indorſe the ſame for execution. *ſ.* 2.

If coſts exceed 20*l.* appeal may be made to the quarter ſeſſions.

But if the ſum ſo ordered to be paid on account of ſuch coſts exceed twenty pounds, the party aggrieved may appeal to the next general quarter ſeſſions, as they may do againſt an order of removal; aud if the ſeſſions ſhall be of opinion that the ſum ſo awarded be more than of right ought to have been directed to be paid, ſuch court may ſtrike out the ſum contained in the ſaid order, and inſert the ſum which in their judgement ought to be paid; and in every ſuch caſe the ſaid court ſhall direct that the ſaid order ſo amended ſhall be carried into execution by the juſtices by whom it was originally made, or in caſe of the death of either of them, by ſuch other juſtices as the court ſhall direct. *ſ.* 2.

Settlement by renting a Tenement of £.10 a Year. *Tr.* 35 *G. III.*

Settlement by renting 10*l.* a year.

THE renting of land at an annual value under 10*l.* and building upon part of it under an agreement with the landlord, a poſt wind-mill, removeable at pleaſure, (which mill is afterwards let off by the tenant for 9*l. per annum*) is not the taking of a tenement of 10*l.* a year. This was decided in the caſe of the *K.* v. *the inhabitants of* Londonthorpe, *Tr. Term* 35 *Geo. III.* The pauper, with his wife and family, were removed by an order of two juſtices, from *Grantham* to *Londonthorpe* *; and on appeal, the order was confirmed, ſubject to the opinion of the Court of *King's Bench* on the following caſe:—The pauper, who was a miller, took a tenement in the pariſh of *Grantham*, at 6*l.* a year, in which he reſided three years, and

* Where the pauper had formerly gained a ſettlement.

and the greater part of that time rented, of the lord of the manor, a piece of waſte ground in the pariſh, at the yearly rent of 10*s.* 6*d.* upon which he had the privilege of building a poſt wind-mill, and which he was at liberty to remove at pleaſure. He accordingly built a poſt wind-mill upon that ground, at the expence of 120*l.* and worked it for about three quarters of a year, but rented the ground for two years and an half, the greateſt part of which time the mill was ſtanding thereon. *The mill was conſtructed upon croſs traces, laid upon brick pillars, but not attached or affixed thereto, which is the uſual mode of building mills of that nature, and the mill was conſidered as the property of the tenant.* He let it to a perſon for a quarter of a year, at the rate of 9*l.* *per annum*, during which time the pauper reſided in the ſaid tenement of the rent of 6*l.* *per annum.* *The pauper afterwards ſold the ſaid mill as a chattel intereſt, and it was taken away by the purchaſer without any interruption of the landlord;* no rates were ever paid or demanded for the mill, or the ground on which it ſtood. The queſtion for the opinion of the court was, Whether the pauper, by living upon this tenement of 6*l.* a year, and renting the piece of land at 10*s.* 6*d.* and afterwards building and working the mill for the time aforeſaid, and letting the ſame for a part of the term as above ſtated, was to be conſidered as holding 10*l.* a year, and to have gained a ſettlement either in reſpect thereof, or as having purchaſed an intereſt in the pariſh of 30*l.* and reſiding there at the ſame time for above the ſpace of 40 days.—To ſhew that the pauper had gained a ſettlement, it was contended, that as long as the mill continued on the land, the whole together exceeded the annual value of 10*l.* and notwithſtanding the mill was afterwards removed by the tenant, it had remained there long enough to give him a ſettlement. —That upon the whole it appeared that the pauper did not go into the pariſh of *Grantham* in a ſtate of vagrancy, but was of ſufficient ability to take a tenement of the value required by the ſtat. *Cha. II.*—By lord *Kenyon* Ch. J. There is no doubt but that the taking of a wind-mill attached to the ground of the value of 10*l.* a year, will confer a ſettlement: but this wind-mill, as deſcribed in the caſe, is nothing but a chattel; and if in queſtions of this kind we were merely to conſider the ability of the pauper, without, at the ſame time, conſidering whether he rented a tenement, we ſhould abandon the

ſtatute

ſtatute altogether, and the determinations upon it; it might as well be ſaid that an iron malt-mill would give a ſettlement. This poſt wind-mill was the ſole property of the tenant himſelf; and it was not fixed in the ground, but detached from it: but in order to confer a ſettlement, it ſhould be ſo connected with the land, as, in legal contemplation, to fall within the deſcription of a tenement.—*Groſe* J. This mill was a mere chattel, and was the property of the tenant, and not of the landlord; and it is no more a tenement than a large coffee-mill put up by the tenant in his houſe.—Order of ſeſſions confirmed. 6 *Durnf. and Eaſt*, 377.

SETTLEMENT BY PAYING PUBLIC TAXES.

Settlement by paying public taxes.

By the ſtat. 35 *Geo. III. c.* 101, *it is enacted, that from and after* 22*d* June, 1795, *no perſon whatſoever, who ſhall come into any pariſh, townſhip or place, ſhall gain a ſettlement there by being charged with and paying his, her, or their ſhare towards the* PUBLIC TAXES, *or levies of the ſaid pariſh, townſhip, or place, for and on account, or in reſpect of any tenement, or tenements, not being of the yearly value of* 10*l.* ſ. 4.

BIGAMY.

Perſons convicted of bigamy, ſubject to the penalties inflicted for larceny;

For rendering the ſtat. 1 *Jac. I. c.* 11. more effectual, it is enacted by 35 *Geo. III. c.* 67, that if any perſon within *England* and *Wales*, being married, or which hereafter ſhall marry, do, at any time, marry any perſon, the former huſband or wife being alive, and ſhall be in due manner convicted thereof, under the ſaid act, ſhall be liable to the ſame puniſhments as perſons convicted of grand or petty larceny. ſ. 1.

and returning after they are tranſported, to ſuffer death.

And if any perſon who ſhall be ordered to be tranſported by virtue of this act, ſhall be afterwards at large within *Great Britain*, without ſome lawful cauſe, before the expiration of the term for which ſuch perſon ſhall be ordered to be tranſported, ſuch perſon ſhall be guilty of felony without benefit of clergy. ſ. 2.

Offenders returning from tranſportation, where to be tried, &c.

And ſuch perſon ſo ordered to be tranſported, and afterwards found at large, may be tried either in the county where he was convicted, or in ſuch county where he ſhall be apprehended, being within *England* or *Wales*; and in ſuch latter caſe, the clerk, or perſon having the

cuſtody of the records of the court by which ſuch perſon was ordered to be tranſported, ſhall certify a tranſcript, briefly containing the tenor and effect of the record, which certificate, being produced to the court before whom ſuch perſon ſhall ſtand on trial, ſhall be deemed ſufficient evidence of the indictment, verdict, and judgment contained in ſuch record. *ſ.* 3.

Friendly Societies.

Societies eſtabliſhed before 34 *G. III. c.* 54. may exhibit their rules for confirmation at quarter ſeſſions.

BY 35 *Geo. III. c.* 111, it is enacted, that it ſhall be lawful for any friendly ſociety, eſtabiſhed before the paſſing of 33 *Geo. III. c.* 54, and which may have inadvertently omitted to take the benefit of the ſaid act, to exhibit the rules made for its government, at any general quarter ſeſſions of the peace, or at any adjournment thereof, to be holden in and for the county, riding, diviſion, or ſhire where ſuch ſociety hath been eſtabliſhed, at any time before or immediately after the *Michaelmas* ſeſſion 1796; and ſuch rules being confirmed, as in the ſaid act directed, may be filed at ſuch ſeſſions, and ſhall be as effectual as if the ſame had been exhibited within the time in the ſaid act limited. *ſ.* 1.

Governors of inſtitutions for the relief of widows, *&c.*

Alſo it ſhall be lawful for the governors, directors, managers, or members of any inſtitution, for the purpoſe of relieving the widows, orphans and families, of the clergy, and others in diſtreſſed circumſtances, to frame rules, for the management and diſtribution of their funds, and the ſame from time to time to amend and alter, or to make new rules, as occaſion ſhall require, and to procure the ſame to be preſented to the juſtices of the peace, for their confirmation within the time herein-before limited, and to be regiſtered under, and ſubject to the ſame regulations, as the members of ſocieties, to be eſtabliſhed by virtue of the ſaid act are. *ſ.* 2.

Inſtitutions whoſe rules ſhall be confirmed may appoint treaſurers, *&c.*

And the governors, directors, managers, or members of any ſuch inſtitution, whoſe rules ſhall be confirmed and regiſtered according to the directions of the former act, may appoint a treaſurer, who ſhall give ſuch ſecurity as is directed by the ſaid act; and ſuch treaſurer ſhall be ſubject to account for the funds belonging to ſuch inſtitution, and the ſame ſhall be veſted in ſuch treaſurer, and ſuch treaſurer ſhall ſue and be ſued in ſuch manner as is directed by the ſaid act; and all proviſions in the ſaid act contained,

tained, ſo far as the ſame relate to the appointment of treaſurers, or to the taking ſecurity from ſuch treaſurer, and for protecting, ſecuring, or recovering the funds veſted in ſuch treaſurer, ſhall be extended to the inſtitutions eſtabliſhed by virtue of this act; and all ſuch inſtitutions ſhall be entitled unto the benefit of this act, with relation to the ſeveral matters before mentioned, as fully as any ſociety eſtabliſhed by virtue of the ſaid former act; and all the proviſions in the ſaid act contained, in relation to the ſeveral matters before mentioned, ſhall be applied and put in execution with reſpect to the ſeveral inſtitutions eſtabliſhed by virtue of this act, as fully as if the ſame had been particularly re-enacted in this act. *ſ.* 3.

Future Effects of Insolvent Debtors liable.

THE effects acquired by an inſolvent debtor after his diſcharge, are liable to be taken in execution for a debt due before. This was decided in the caſe of *Spalton* and *another* v. *Moorhouſe*, *T.* 35 *G. III.* which was as follows:—The goods of the defendant, who had been diſcharged under the inſolvent act, having been taken in execution, it was moved to ſet aſide the *ſcire facias*, and to reſtore the goods levied under it, *on the ground that his future effects, as well as his perſon, were protected againſt any executions for any debt due before the* 12*th of February*, 1794.—But the court ſaid, that neither the 31ſt nor 32d ſections of the ſaid act, extended to the effects of the inſolvent; the latter clauſe, as well as the former, being confined to the diſcharge of the perſon. 4 *Durnf. & Eaſt*, 366.

COURT OF KING'S BENCH.

Rogers *v.* Lloyd.

THE plaintiff was a carpenter, and brought this action to recover only 2l. for meaſuring ſome work. The work which he meaſured was only of the value of 34l. Several carpenters on the part of the plaintiff were called to prove this was a juſt and reaſonable demand.

On the part of the defendant, Mr. Garrow obſerved, that the Lord Chief Juſtice had ſet his face againſt ſuch demands. People who called themſelves ſurveyors, charged a per centage on the work they ſurveyed, whatever might be the value of it. Suppoſe a ſurveyor ſurveyed

a houſe worth 10,000l. he demanded 5 per cent. on the whole of that ſum; and beſides, he expected to get another ſum from the different workmen who had been employed, that he might not narrowly inſpect their work. He ſaid, he ſhould call a number of honeſt and reſpectable ſurveyors to prove that one guinea was what the plaintiff ought to have demanded for this work.

Mr. Spencer was firſt called. He ſaid, that in ſurveying he always charged five per cent. and in meaſuring two and a half per cent. He ſhould have been ſatisfied in this caſe with one guinea. Mr. Erſkine aſked him, what he would charge for meaſuring a piece of work which he might do in an hour? He replied, two ſhillings and ſixpence. Said the learned counſel, ſuppoſe I were to deſire you to call at my houſe, at Serjeant's Inn, to meaſure ſome work which another man had done, and which you might meaſure in one hour, how much would you charge me?—Anſwer, "If, Sir, I were to take a bit of dinner with you, as I know you keep a good table, and would treat me with a bottle or two of excellent wine, I ſhould only charge you a guinea for my time." And how much would you charge for ſupper?—No anſwer.

This evidence was confirmed by that of two other honeſt ſurveyors, Mr Malefant and Mr. Leverton, the firſt of whom admitted that he charged as high as any man in England.

Mr. Erſkine in reply, on the part of the plaintiff, ſaid, he ſubſcribed to the law, as it had been laid down on this ſubject by his lordſhip in the various inſtances of this kind that had come before him for judgment. The law knew nothing of ſurveyors in their character of ſurveyors, and of their charging a per centage. There were two ways in which they, like all other men, might be paid: 1ſt, If a contract was made, that contract the law would enforce:—2dly, If there was no contract, they muſt be paid according to what their work deſerved. He did not wiſh to run down, by bell, book, and candle, the whole claſs of ſurveyors. Nothing was ſo common as for people of certain profeſſions to run down thoſe of another.—The learned counſel here repeated a dialogue between a lawyer and a phyſician, which he applied to this caſe. One day a phyſician of eminence met a lawyer, and aſked him, Where he had come from? The lawyer replied, he had juſt come from a conſultation, which was not very likely to be of great ſervice to his client. Said the phyſician, Being lately ſent for

for to a gentleman not in low circumſtances, and having a good man of an apothecary to deal with, and feeling as a phyſician, I wrote a preſcription as long as one of your briefs; in the mean time I perceived the poor apothecary trembling, and aſked him what was the matter? He replied, "I ſhall be ruined, Sir, for I take the family by the year:" Upon this I tore my preſcription to pieces, threw it under the table, and wrote the following one—*Repetatur Hauſtus.*

The learned counſel ſaid, there was a bloody war between carpenters and ſurveyors. Carpenters could meaſure as well as ſurveyors. Carpenters took for their labour, and went out on ſmall jobs. A ſurveyor took a per centage, whether his labour was much or little. A ſurveyor lately went down into the country, in his poſt-chaiſe and four, and ſurveyed a houſe, dined on veniſon and claret, had a roaſt chicken, and a bottle of old hock for ſupper, and an excellent bed: he returned to town next day, and demanded for his trouble 150 guineas!

He truſted the jury in this caſe would think the plaintiff's demand was reaſonable.

The jury found the plaintiff deſerved one guinea for his labour, and as the defendant had paid that ſum into court, there was a verdict for the defendant.

SITTINGS AT GUILDHALL.

THURSDAY, FEB. 25.

WOOD *v.* VANE.

FALSE CHARACTER.

THIS was an action of conſiderable importance to the trading world. It was brought by the plaintiff, who is a hoſier and manufacturer, to recover from the defendant the ſum of 264l. 10s. which the plaintiff had loſt, in conſequence of the defendant having repreſented a perſon of the name of Harris to be in good circumſtances, knowing at the ſame time that he was in an inſolvent ſtate, and unworthy of credit.

It appeared by the teſtimony of ſeveral witneſſes, that Samuel Harris made application to the plaintiff to purchaſe ſome goods, and gave a reference for his character, as a man of credit, to Mr. Wane, the defendant. A ſervant of the plaintiff was accordingly diſpatched to Mr. Wane,

Wane, to enquire into his reſponſibility; Mr. Wane ſaid, he was well acquainted with Harris, and that he was a good man. In conſequence of this repreſentation, the plaintiff ſold to Harris a quantity of goods. Harris ſoon afterwards abſconded in the plaintiff's debt, to the amount of 264l. 10s. and turned out to be totally unworthy of credit.

The goods were ſold on the 14th of October, 1795.

In order to prove that the defendant knew that Harris was a man unworthy of credit at the time he repreſented him to be a ſolvent perſon, ſeveral witneſſes were called, who ſtated that the defendant and his partner cauſed him to be arreſted in September, 1795, for a large ſum of money.

The defence to this action was, that although the defendant had arreſted Harris in September laſt, he had afterwards good reaſon to alter his opinion of him; and that at the time he gave him the character, he believed him to be an honeſt and reſponſible man, and under that perſuaſion had given him credit for goods, and dealt with him up to the time he had abſconded.

Several witneſſes were called, who proved that the defendant had truſted Mr. Harris with goods ſubſequent to the time he gave him the character in queſtion, and was much ſurpriſed when he found he had abſconded.

Lord Kenyon ſaid, the ſingle queſtion for the conſideration of the jury was, "Whether the defendant had acted fairly and honeſtly, or meant to deceive the plaintiff."

The jury withdrew for about an hour, and returned with a verdict for the plaintiff, damages 264l. 10s.

Short Account of a strange Trial, *Feb.* 25.

Hodges *v.* Hodges.

THIS was a proſecution brought by Thomas Hodges, the ſon, againſt Thomas Hodges the father, for payment of a bill, amounting to the ſum of 163l. for board and lodging to the wife and ſix children of the ſaid Thomas Hodges, ſenior.

This cauſe attracted attention, from the unuſual and unnatural circumſtance of a ſon's proſecuting a father. The facts ſtated on the part of the proſecution were theſe: the father and huſband, had often ill-treated his wife; repeatedly kicked without provocation, as well as threatened to turn her out of doors, and even threatened her life,

and at last drove her with six children (the eldest not three years old) out of the house; who, upon this, took refuge in the house of Thomas Hodges, the son, who lodged and boarded them for the space of eight months, to recover the expences of which, the son brought this suit of law against the father. Evidence was brought by servants, &c. to prove that the wife had been thus ill-used. On the other hand it was stated, that the wife had taken the part of the children when the father was correcting them; that the father accused the prosecutor and eldest son Thomas, (who was in partnership with him as a coal merchant) of improper conduct in money affairs.

Mary Hodges, daughter of the defendant, being called to bear witness on behalf of the prosecutor, Lord Kenyon humanely interposed, and observed, that it was a most unnatural contest, and that he judged it improper that a child should be summoned to give evidence against her own father. His lordship advised the parties to make up the dispute, but the father refused to do so, as he wished to have his character justified. The trial proceeded, and being gone through, his lordship advised the with-drawing of a juror, which was accordingly done, and here the matter ended, each party being compelled to pay their own costs.

M. 36 *G. III.* STONE *and* ANOTHER *v.* CARTWRIGHT.

THE declaration stated the plaintiffs were possessed of a certain close in *Tipton*, in the county of *Stafford*, and also of a dwelling-house, &c. there; that the defendant was possessed of a certain coal-mine, under the surface of the said close and house, &c. and that the defendant well knowing the premises, but contriving, &c. to injure the plaintiff, &c. worked and caused to be worked, &c. his said mine of coal in a negligent, incautious and unskilful manner; and neglected to leave necessary and sufficient pillars, &c. to support the said buildings and premises of the plaintiffs and the soil, &c. by reason whereof the surface of the said close sunk and gave way, &c. and the buildings, &c. were rent and rendered dangerous. It appeared at the trial before lord *Kenyon*, at *Stafford*, that the colliery belonged to A. M. Ward, an infant, and that the defendant had been appointed agent and manager thereof under the court of Chancery; that he employed a bailiff

No action lies against a steward, manager, or agent, for damage done by the negligence of those employed by him in the service of his principal, but the principal, or those employed are only liable.

a bailiff under him, who ſuperintended the work; that he hired and diſmiſſed the colliers at his pleaſure, but that he took no perſonal concern in the buſineſs, was not preſent when the injury complained of was done, nor had given any particulars orders for working the mine in the manner which had occaſioned it. Upon this evidence lord *Kenyon* was of opinion, that the action could not be maintained againſt the defendant, who was the middle man, but that it ought to have been brought either againſt the perſon who actually committed the treſpaſs, or concurred therein, or, againſt the ſuperior, the owner of the colliery, for whoſe benefit the work was carried on. On this occaſion he referred to the caſe of *Gwinne* v. *Poole*, 2 *Lutw.* 935.

The plaintiff being nonſuited, Ruſſel now moved to ſet aſide the nonſuit; contending that in tort all were principals, and anſwerable, as well for the acts done by themſelves, as for thoſe done by their ſervants, or perſons acting under their authority; and that here it was the duty of the defendant to take care that thoſe who were employed by him, performed their work with due care and circumſpection.

Lord KENYON Ch. J. There is no pretence whatever, for imputing liability to the defendant in this action: it might as well be contended that a ſimilar action would lie againſt the ſteward of another, for all the defaults or improper conduct of the men employed under him, by which any other perſon received damage. In all theſe caſes I have ever underſtood, that the action muſt either be brought againſt the hand committing the injury, or againſt the owner for whom the act was done; but it was never heard of that a ſervant, who hires labourers for his maſter, was anſwerable for all their acts. The preſent defendant has no intereſt in the colliery, nor was it worked for his benefit; he was no more than a ſteward appointed by the court of Chancery. His lordſhip quoted the caſes of *Gwinne* v. *Poole*, before-mentioned; and *Goodwin* v. *Gibbons*, 4 *Burr.* 2108.

Aſhhurſt, J. was of the ſame opinion.

Groſe, J. It frequently happens that a perſon's gardener employs labourers under him, yet it could never be contended, that on that account he would be anſwerable for any damage done by them in the courſe of their employment.

Lawrence,

Lawrence, J. If the plaintiffs had given evidence that the defendant had particularly ordered those acts to be done from whence the damage had enſued, that would have varied the caſe; but no ſuch evidence being adduced, I think the opinion delivered at the trial was perfectly right. Rule refuſed. 6 *Durnf.* & *Eaſt*, 411.

To the EDITORS *of the* COUNSELLOR'S MAGAZINE.

Gentlemen,

THE trial of George Coombers, inſerted in your firſt Number, ſeems to have occaſioned ſome embarraſſment among the Twelve Judges. After having heard it twice argued by counſel before them, however, they decided that the priſoner was tried by a competent juriſdiction. The following caſe is certainly as extraordinary, if not infinitely more ſo; becauſe no deciſive opinion was ever given on it. Your inſertion of it will much oblige

Your moſt obedient ſervant,

Middle Temple. A STUDENT.

COCKWAINE'S CASE.

AT the Old Bailey in December ſeſſion 1788, *Iſaac Cockwaine* was indicted before Mr. Juſtice *Wilſon*, for feloniouſly ſtealing *two men's hats*, the property of *Benjamin Rankin*.

The jury found the priſoner *guilty*, ſubject to the opinion of the TWELVE JUDGES, on the following facts, which they found ſpecially: "That the priſoner on the "7th of November, 1788, went to the ſhop of the pro- "ſecutor in Leadenhall-ſtreet, with an intent *unlawfully* "to obtain and convert to his own uſe the goods men- "tioned in the indictment; and told the ſaid Mr. *Rankin*, "that a Mr. *Sanſom*, who lived in a neighbouring ſtreet "was going out of town early the next morning, and "wanted a new round hat, and deſired that he, the ſaid "Mr. *Rankin*, would take ſome hats of that kind to ſhew "Mr. *Sanſom*: that Mr. *Rankin* went accordingly to Mr. "*Sanſom's*, in London-ſtreet; and while he was gone, "the priſoner returned in about three minutes to the ſhop "of Mr. *Rankin*, and ſaid to a ſervant-man of Mr. *Ran-* "*kin's*, who had been in the ſhop when the priſoner firſt

Quere, if unlawfully obtaining and converting the goods of a tradeſman, under a falſe pretence of being ſent for them to ſhew a cuſtomer, is felony?

" went there, " *Your maſter is at our houſe, and he has* " *ſent me, and ſays, you muſt give me the cocked hat and* " *round hat that are in the window?* " That the ſervant- " man accordingly, then and there, delivered to the pri- " ſoner the ſaid two hats: that the priſoner went away " with the ſaid two hats, and *unlawfully* converted them " to his own uſe; and that the ſaid Mr. *Rankin* did not " in truth and in fact ſend him, or any other perſon for " the ſaid hats. But whether under theſe circumſtances, " the ſaid *Iſaac Cockwaine* is guilty of felony, the jurors " pray the direction of the court. And if, &c.

This was at firſt intended as a *ſpecial verdict*, but was afterwards drawn up as a *ſpecial caſe*, and referred to the TWELVE JUDGES; and it came *more than once* under their conſideration, but NO OPINION WAS EVER GIVEN!

The priſoner remained in Newgate in February ſeſſion 1790, after which he received a PARDON, and before the April ſeſſion following he was diſcharged.

To the EDITORS *of the* COUNSELLOR'S MAGAZINE.

Gentlemen,

BEFORE the trial of James Bolland, in February ſeſſion, 1772, no perſon had ever been capitally convicted for forging the name of a *ſuppoſed* perſon, or one who never *had exiſtence;* it having been generally underſtood that it was eſſential to the commiſſion of forgery that it ſhould be done IN THE NAME OF ANOTHER; and conſequently that the ſigning of a fictitious name could not be conſtrued to amount to that crime. This was the general doctrine prior to Bolland's tranſaction; and many perſons thought the law had been ſtrained to extend to his offence, on account of the extreme infamy of his character. But Bolland's fate has, however, eſtabliſhed a precedent, and proved fatal to ſubſequent offenders in *fictitious* forgery; as will appear from the following caſes, which I beg you will inſert for the information and amuſement of your readers. In order to be regular I ſhall give them chronologically.

Your's, &c.

A. B.

Lincoln's Inn.

JAMES BOLLAND'S CASE, CLEARLY STATED.

AT the Old Bailey, in February ſeſſion, 1772, *James Bolland* was tried before *James Eyre*, Eſq. Recorder, preſent Mr. Juſtice *Nares*, for forging on the back of a promiſſory note for the payment of money, drawn by one *Thomas Bradſhaw*, and indorſed by one *Samuel Pritchard*, a certain indorſement in the name of *James Banks*, with intent to defraud *Francis Lewis Cardeneaux*.—The note was in the words and figures following: Forging a fictitious name felony.

"London, 12th Oct. 1771.

"£.100

"Two months after date I promiſe to pay to Mr. "Samuel Pritchard, or order, one hundred pounds, "value received.

T. BRADSHAW."

Charles-ſtreet, Covent Garden.

There was alſo another count for uttering and publiſhing as true the ſaid forged indorſement of the name of *James Banks*, knowing the ſame to be forged, with the like intention.

The following circumſtances appeared in evidence: An account of money tranſactions of a very complicated nature, and to a very large amount, ſubſiſted between *Bolland* and one *Pritchard*. *Bolland* had arreſted *Pritchard* for 2600*l.* and obtained a judgment for £.1498 15*s.* A Mr. *Jeſſon* had diſcounted for *Bolland* a bill upon *Pritchard* for £.52 10*s.* 0*d.* but neither *Pritchard* nor *Bolland* being able to take it up when it became due, it remained unpaid in the hands of *Jeſſon*. In the month of October, 1771, *Bolland*, *Jeſſon*, and a Mr. *Lilburne*, met at the George and Vulture Tavern, in Cornhill, in a public room. *Jeſſon* aſked *Bolland* when he would ſettle the note of fifty guineas; *Bolland* immediately produced the note in queſtion of £.100, drawn by *Bradſhaw*, payable to *Pritchard*, and indorſed "JAMES BOLLAND," and aſked *Jeſſon* to diſcount it. *Jeſſon*, upon obſerving that *Bolland* had indorſed it, told him, that as *his name* was on the *back of it*, he could not negociate it; that he knew *Bradſhaw*, and conſidered him as a good man; but that he did not chooſe to put his (*Jeſſon's*) name on the

ſame paper with *Bolland's*. *Bolland* replied, "I can take off my name." Immediately Mr. *Lilburne* took up one of the table-knives, with intention to eraſe all the name; but when he had eraſed all but the initial B, for he began at the laſt letter of the name, *Bolland* ſaid, "Don't ſcratch "it all out, for it may disfigure it, or cancel it by ſcratch-"ing a hole in it; I will think of ſome other name that "begins with B;" and he immediately filled it up with "ANKS," which made the name BANKS. When this was done, he returned the note to *Jeſſon*, who put it into his pocket, ſaying, "I ſhall give it to a particular friend "of mine, and he will undoubtedly aſk me who BANKS "is." To this *Bolland* replied, "BANKS is a publican "or victualler, and lives in or near Rathbone Place."

The enſuing day *Jeſſon* applied to Mr. *Cardeneaux*, to get this bill diſcounted. *Cardeneaux* took the bill, and promiſed to give *Jeſſon* the money for it on the Friday following. *Jeſſon*, having ſome money to make up, applied to *Cardeneaux* on the Thurſday, and borrowed £.15 16*s*. on the credit of the bill. On the Saturday morning *Bolland* applied to *Jeſſon*, and inſiſted on having the bill returned, or the amount of it paid to him. *Jeſſon* and *Bolland* went to a coffee-houſe, and ſent for *Cardeneaux*. He came, and *Jeſſon* introduced him to *Bolland* as the owner of the bill. *Cardeneaux* enquired of *Bolland* who *Pritchard* the payee, and *Banks* the indorſer of the bill were. *Bolland* ſaid, "*Pritchard* is a man extremely well "known; he is a dealer in horſes, and a man of great "property. *Banks* alſo is a man of property; he deals "largely in wines and ſpirits, and lives in Rathbone "Place." *Cardeneaux* told *Bolland* that it was not convenient to him to give the whole in caſh; upon which *Bolland* produced another bill of £.10 10*s*. and *Cardeneaux* gave him his note for 50*l*. and a draught upon his banker for £.44 5*s*. which with the £.15 16*s*. he had paid before to *Jeſſon*, and 9*s*. diſcount, made up the £.110 10*s*. for both the bills.

Cardeneaux never deſired *Bolland* to indorſe the bills, becauſe *Jeſſon* had told him when he gave him the £.100 bill, that it was better *his* name ſhould not appear upon it, he having been formerly a ſheriff's officer; and that the bill would not paſs properly at the bankers with his name on it.

Before

Before the bill came due, both the drawer *Bradſhaw*, and the payee *Pritchard* became bankrupts. Upon theſe events, *Cardeneaux* applied to *Jeſſon* for a direction to *Bolland*; and, having got it, he ſaid to *Bolland*, "That "bill I diſcounted for you will not be paid." *Bolland*, with an air of aſtoniſhment, ſaid, "What bill! I never "diſcounted a bill with you, ſir — you miſtake me— "my name is *James Bolland*. I never ſaw you in my "life; and you have no bill with my indorſement on it." And when *Cardeneaux* inſinuated that he was acquainted with his having altered the name, he treated the idea of its *being a forgery* with the moſt ſupercilious contempt.

When the bill became due *Bolland* refuſed to pay it, and *Cardeneaux* put it into the hands of a Mr. *Morris*, in order to obtain the money.

While things remained in this ſituation, Mr. *Levi*, an attorney, two of whoſe clients *Bolland* had deceived, got intelligence from *Pritchard* of the alteration of the name of "BOLLAND" to that of "BANKS," and applied to *Cardeneaux* to proſecute, to which *Cardeneaux* conſented. To obtain the note, *Levi*, by the deſire of *Cardeneaux*, gave Mr. *Morris* an undertaking to deliver up, or to be accountable for, the bill. *Levi* apprehended *Bolland*, and, on his being committed by *Sir John Fielding*, depoſited the note with *Sir John's* clerk, who produced it at the trial.

After *Bolland's* commitment, a perſon brought the £.100 to Mr. *Cardeneaux*, in the name of *James Banks*, and he gave him a receipt, the form of which the perſon brought with him, in the name of *James Banks*, containing a promiſe to deliver up the bill on demand, the bill being then in the cuſtody of the magiſtrate. But it did not appear that there ever was in fact ſuch a perſon exiſting as JAMES BANKS, of *Rathbone Place*.

The jury found the priſoner guilty; and he received ſentence of death. But the execution of the ſentence was reſpited; and it was ſubmitted to the conſideration of the *Twelve Judges*, whether, under all the circumſtances of this caſe, *Bolland* had been guilty of *forgery* within the meaning of the ſtatute of the 2 *G. II. c.* 25. The opinion of the judges, upon this caſe, was never publicly communicated. The principal doubt ſeems to have been, whether forgery can be committed in the name of a perſon

ſon who never had exiſtence? *Bolland* was executed at Tyburn, the 18th of May, 1772. But if any doubts exiſted at that time, they are removed by the following caſes:

Edward Tuft's Caſe.

To indorſe a bill with a fictitious name is forgery, though ſuch indorſement was uſeleſs.

AT the Lent aſſizes for the county of *Leiceſter*, 1777, *Edward Tuft* was tried before Mr. Juſtice *Nares*, for forging an indorſement on a bill of Exchange. The jury found the priſoner guilty; but the learned and humane judge, cautious of paſſing ſentence of death in a caſe which admitted of doubt, ſubmitted to the conſideration of the Twelve Judges, whether, upon the following ſtate of facts, the conviction was proper?

The bill of exchange was the property of one *William Wetheral*, out of whoſe pocket it had been picked or loſt, with other things, at Leiceſter races. The priſoner had the very ſame night endeavoured to negociate it at Leiceſter; but being diſappointed, he proceeded to Market Harborough, where he bought a horſe of one *John Ingram*, the landlord of the inn, and offered him this bill to change. The landlord not having ſufficient caſh in the houſe, carried it to a banker's in the town, where the clerk told him that it was very good paper, for that he knew the payee who had indorſed it, and that if he (the landlord) would put his name on the back of it, it ſhould be immediately diſcounted. The landlord, however, not knowing the perſon from whom he had received it, refuſed to indorſe it; but told the clerk that the gentleman was then at his houſe, and he would go and fetch him: accordingly he went to the priſoner, who accompanied him to the banker's. The clerk then told the priſoner, that it was the rule of their ſhop never to take a diſcount bill, unleſs the perſon offering ſuch bill indorſed it; and therefore if he (the priſoner) would indorſe it, it ſhould be diſcounted. The priſoner immediately indorſed it by the name of "*John Williams*," which *was not his own name*, and the banker's clerk, after deducting the diſcount, gave him the caſh for it. The priſoner, in his defence, ſaid he had found it.

The Judges were unanimouſly of opinion, that this was a forgery; for though the fictitious ſignature was not neceſſary to his obtaining the money, and his intent in

in writing a falſe name was probably only to conceal the hands through which the bill had paſſed, yet it was a fraud both on the owner of the bill, and on the perſon who diſcounted it. The one loſt the chance of tracing his property, and the other loſt the benefit of a real indorſer, if, by accident, the prior indorſements ſhould have failed.

The judges might alſo, with great propriety, have remarked, that it muſt certainly be a *forgery with intent to defraud*, when *two* indorſers are repreſented as quarantees of a bill or note, when in fact only *one* of them is in exiſtence: it is clearly giving it a falſe credit; for perſons who are accuſtomed to receive bills of exchange, &c. conſider every name on them as an additional ſecurity or pledge to indemnify them from loſſes; but if the *real* indorſers fail, recourſe cannot be had to a *fictitious* or *imaginary* one. It therefore now ſeems a ſettled point that to aſſume a *fictitious* name, as a *pretended indorſer* of a bill, is *forgery with intent to defraud.*

See the caſe of *Hyam Levy*, who was convicted upon the authority of the above caſe, at the Old Bailey, in October ſeſſion, 1782. [See alſo the caſe of *Tatlock* v. *Harris*, 3 *Durnf. & Eaſt*, 176. And the caſe of *Gibſon* and *Johnſon* v. *Minet* and *Factor* in error. 1 *H. Black. Rep.* C. B. 588.]

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36 *G. III. c.* 39. *An Act to amend an Act made in the ſecond Year of G. III. intituled, An Act for the better Preſervation of the Game in that Part of Great Britain called England.*

24th MARCH, 1796.

WHEREAS an act was paſſed in the ſecond year of *G. III. for the better preſervation of the game in that part of* Great Britain *called* England, whereby it is enacted, That no perſon after the firſt of *June*, 1762, ſhall take, kill, deſtroy, carry, ſell, buy, or have in his poſſeſſion or uſe, any partridge, between the twelfth of *February* and the firſt of *September* in any year, under the penalty by the ſaid act impoſed: And whereas the ſearching for, taking, and killing of partridges ſo early in the year as the firſt of *September*, has been found very prejudicial to the corn then

Preamble. 2 *G. III. c.* 19, recited.

and ſo much as relates to killing partridges before *Sept.* 1, repealed.

then growing or uncut, or cut and not carried; it is therefore enacted, That, after the paſſing of this act, ſo much of the ſaid act as relates to the taking, killing, deſtroying, uſing, or having, any partridge before the firſt of *September* in any year, ſhall be repealed.

No partridge to be killed, *etc.* between *Feb.* 12, and *Sept.* 14.

And, from and after the paſſing of this act, no perſon ſhall take, kill, deſtroy, carry, ſell, buy, or have in his poſſeſſion or uſe, any partridge, between the twelfth of *February* and the fourteenth of *September* in any year; and if any perſon ſhall tranſgreſs this act in the caſe aforeſaid, he ſhall be liable to the ſame penalty as by the ſaid act is impoſed on any perſon tranſgreſſing the ſame; ſuch penalty to be inflicted, recovered, applied, and diſpoſed of, in ſuch and in the ſame manner as in and by the ſaid act is provided, with reſpect to the penalty thereby impoſed on perſons tranſgreſſing the ſaid act.

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36 *G. III. c.* 28. *An Act to amend ſo much of an Act, made in the ninth Year of the reign of King George the Firſt, intituled, An Act for amending the Laws relating to the Settlement, Employment, and Relief of the Poor, as prevents the diſtributing occaſional Relief to poor Perſons in their own Houſes, under certain Circumſtances and in certain Caſes.*

24th DECEMBER, 1795.

Preamble.

9 *Geo. I. c.* 7.

WHEREAS by an act paſſed in the ninth year of the reign of King *George* the Firſt, intituled, *An act for amending the laws relating to the ſettlement, employment, and relief of the poor*, it is (among other things) enacted, That poor pariſhioners ſhall not aſk or receive collection or relief from the churchwardens and overſeers of their reſpective pariſhes, if they ſhall refuſe to be kept, lodged or maintained in the houſe or houſes provided for the poor by ſuch pariſhes. And whereas the proviſion contained in the act above-mentioned has been found inconvenient and oppreſſive, as it often prevents an induſtrious poor perſon from receiving ſuch occaſional relief as is beſt ſuited to the peculiar caſe of ſuch poor perſon, and inaſmuch as in certain caſes it holds out conditions of relief injurious to the comfort and domeſtic ſituation and happineſs

pineſs of ſuch poor perſons: It is therefore enacted, That, from and after the paſſing of this act, it ſhall be lawful for the overſeer or overſeers of any pariſh, town, townſhip, or place, with the approbation of the pariſhioners, or the majority of them, in veſtry or other uſual place of meeting aſſembled, or with the approbation in writing of any juſtice or juſtices of the peace uſually acting in the reſpective diſtrict, to diſtribute and pay collection and relief to any induſtrious poor perſon, at his own home, houſe, or houſes, under certain circumſtances of temporary illneſs or diſtreſs, and in certain caſes reſpecting ſuch poor perſon, or his family, or reſpecting the ſituation, health, or condition, of any poor houſe or poor houſes, in any pariſh, town, townſhip, or place, wherein a houſe ſhall be ſo hired, built, or purchaſed, and a contract made with any perſon for lodging, keeping, maintaining, and employing, any or all poor perſons who ſhall deſire to receive collection or relief, although ſuch poor perſon ſhall refuſe to be lodged, kept, and maintained, within ſuch houſe; any thing in the ſaid act paſſed in the ninth year of *George* the firſt to the contrary notwithſtanding. *ſ.* 1.

Overſeers, with the approbation of the pariſhioners or any juſtice, may relieve poor perſons at their own homes.

And it ſhall be lawful for any juſtice of the peace for any county, city, town, or place, uſually acting for the diſtrict wherein the ſame ſhall be ſituated, at his diſcretion, to order collection and relief to any induſtrious poor perſon, and ſuch poor perſon ſhall be entitled to aſk and receive ſuch relief at his home, houſe or houſes, in any pariſh, or place, notwithſtanding any contract ſhall have been made with any perſon for lodging, keeping, maintaining, and employing, any and all poor perſons in a houſe or houſes for ſuch purpoſe hired or purchaſed, and the churchwarden or overſeers, for ſuch pariſh, or place, are required to obey and perform ſuch order for relief given by any juſtice as aforeſaid. *ſ.* 2.

Juſtices may order relief to poor perſons at their own homes.

Provided always, That the ſpecial cauſe of ordering and directing collection or relief to any poor perſon, at his home, houſe or houſes, be aſſigned and written on each order for relief given and directed by any juſtice as aforeſaid; and provided that ſuch order be given for, and do remain in force for a time not to exceed one month from the date of ſuch order: Provided alſo, that it ſhall be lawful for any two juſtices to make any further order for the ſame or like purpoſe, for any further time not

Cauſe of ordering ſuch relief to be aſſigned on the order of the juſtice, &c.

exceeding one month from the date of ſuch order, and ſo on from time to time, as the occaſion ſhall require, ſuch juſtice or juſtices firſt adminiſtering an oath as to the need and cauſe of ſuch relief in each of the above caſes, and thereon ſummoning the overſeer or overſeers of the pariſh, &c. to be charged with ſuch relief, to ſhew cauſe why ſuch poor perſon ſhould not recive ſuch relief in manner as by law provided in caſes where no contract for lodging, keeping, and maintaining the poor, ſhall as aforeſaid have been made. *ſ.* 3.

Not to extend to houſes of induſtry.

Provided always that nothing in this act ſhall extend to places where houſes of induſtry are provided under 22 *G. III. c.* 83, or under any ſpecial act. *ſ.* 4.

Under 22 *G. III.* Public act.

This act ſhall be deemed and taken to be a public act. *ſ.* 5.

Obſervations on Foreſtalling, Ingroſſing, and Regrating.

Foreſtalling.

FORESTALLING, from the *Saxon*, *fore*, ſignifying *before*, and *ſtalle*, a ſtanding place or department; from whence ſprang the word *ſtallage*, which ſignifies money paid for erecting a ſtall or ſtand, for the purpoſe of expoſing goods to ſale in a fair or market. It ſignifies the buying or bargaining for any corn, cattle, or other merchandize by the way, before it comes to any market or fair to be ſold; or by the way, as it comes from beyond the ſeas, or otherwiſe, towards any city, port, haven, or creek of this realm, in order to ſell the ſame again at a greater price. 52 *H. III. ſt.* 6. *Cowel.*

Ingroſſing.

Ingroſſing, from *in* and *groſs*, great or whole, ſignifies the buying of corn growing, or dead victuals to ſell again.

Regrating.

Regrating, ſignifies the buying of wares and victuals, on purpoſe to enhance the prices: formerly ſuch as bought by great and ſold by retail, came under that notion, by 27 *Ed. III. ſt.* 1. *c.* 3. Afterwards, by 5 & 6 *Ed. VI. c.* 14. 5 *Eliz. c.* 12. and 13 *Eliz. c.* 25. it denoted the buying and ſelling of any wares or victuals, in the ſame markets or fairs, or within five miles thereof. Heretofore both the *ingroſſer* and *regrater* were comprehended under the word *foreſtaller*, and as ſuch ſhall be puniſhed. 3 *Inſt.* 199.

Several

Several ſtatutes have, from time to time, been made againſt theſe offences in general, among which were thoſe mentioned in the preceding article; but they are all repealed by the 12 *G. III. c.* 71, uſually called Alderman Harley's act.

The ſtatutes againſt theſe offences are repealed.

But though theſe offences are no longer combated by the ſtatutes, they are ſtill puniſhable upon indictment at the common law by fine and impriſonment.

But they are ſtill puniſhable at common law.

At the common law all endeavours to enhance the common price of any merchandize, and all practices which have an apparent tendency thereto, whether by ſpreading falſe rumours, or by purchaſing things in a market before the accuſtomed hour, or by buying and ſelling again the ſame thing in the ſame market, or by any other ſuch like devices, are highly criminal, and puniſhable by fine and impriſonment. 1 *Haw.* 234, 5. 3 *Inſt.* 195, 196.

And ſurely every attempt of this kind muſt be looked upon as a high offence againſt the public; as it apparently tends to put a check upon trade, to the general inconvenience of the people, by putting it out of their power to ſupply themſelves with a commodity, without an additional expence; which often proves extremely oppreſſive to the poor, and cannot but give juſt cauſe of complaint to the rich. 1 *Haw.* 234.

By the common law a merchant, whether he be a ſubject or foreigner, bringing victuals or any other merchandizes into the realm, may ſell the ſame in groſs; but no perſon can lawfully buy within the realm any merchandize in groſs, and ſell the ſame in groſs again; becauſe by ſuch means the price will be enhanced; for the more hands any merchandize paſſes through, the dearer it muſt grow, becauſe every one will make his profit of it: and, if ſuch practices were allowable, a rich man might engroſs into his hands a whole commodity, and then ſell it out at any price he pleaſed; which is of ſuch dangerous conſequence, that the bare engroſſing of a whole commodity, with intent to ſell it at an unreaſonable price, is an offence indictable at the common law, whether any part thereof be ſold by the ingroſſer or not. 1 *Haw.* 234, 5. 3 *Inſt.* 196.

A merchant who imports may ſell in groſs, but the buyer in groſs here cannot ſell in groſs

And ſo jealous is the common law of all practices of this kind, that it will not ſuffer corn to be ſold in the ſheaf; perhaps for this reaſon, becauſe by ſuch means the market is in effect foreſtalled. 1 *Haw.* 235.

The ſtat. of 12 *G. III. (called Harley's act)* it is hoped, will be immediately repealed; in conſequence of which all the acts of parliament for puniſhing *foreſtalling*, *ingroſſing*, and *regrating*, will be reſtored to the ſtatute book, and have their original force and effect as before the 12 *G. III.* It appears, however, by the preamble to that act, that it was thought the repeal of laws ſo highly penal would tend to lower the price of proviſion, &c. and induce more perſons to bring their commodities to market, which they were deterred from before by the multiplicity of ſevere ſtatutes then exiſting, and the heavy penalties they ſometimes ignorantly and innocently incurred. But it evidently appears that the repealing of this act has had a very pernicious effect. Foreſtalling, &c. being now only an offence at common law, and puniſhable only by fine and impriſonment; and even that puniſhment has, till very lately, been inflicted with wonderful moderation. Let it be conſidered, for a moment, that while the penal ſtatutes exiſted, there were inducements to proſecute the offenders, ſuch as *rewards*, forfeiture, &c. But by the common law (the only law now in force againſt ſuch delinquents) the proſecutor of the indictment can have little or no compenſation for the trouble and loſs of time in convicting; for inſtead of rewards, as formerly, he can only enjoy the ſatisfaction of having the offender *fined* and *impriſoned*, and of acquiring the reputation of a litigious meddling fellow, who would have been much better employed in minding his own buſineſs.

Woolcombers.

Woolcombers, and their families, may ſet up trade in any place.

BY 35 *Geo. III. c.* 124, all ſuch perſons who have ſerved an apprenticeſhip to the art, myſtery, or trade of a woolcomber, or who are, by law, entitled to exerciſe the ſame, and alſo the wives and children of ſuch woolcombers, may ſet up and exerciſe ſuch trade, or any other trade or buſineſs which they are apt and able for, in any town or place within this kingdom, without any moleſtation; nor ſhall ſuch woolcombers, or their wives or children, during the time they ſhall exerciſe ſuch trades, be removeable from ſuch place to their laſt legal ſettlement, until they ſhall become actually chargeable to ſuch pariſh; and if any ſuch woolcomber, or his wife or child, ſhall be ſued for uſing any ſuch trade, then the ſaid woolcomber,

comber, or his wife or child, making it appear to the court, that they have ſerved a legal apprenticeſhip to a woolcomber, or that they be the wife or child of ſuch woolcomber, ſhall, upon the general iſſue pleaded, be found not guilty; and ſuch perſons who, notwithſtanding this act, ſhall proſecute the ſaid ſuit by bill, plaint, information, or indictment, and ſhall have a verdict paſs againſt him, or become nonſuit therein, or diſcontinue, ſhall pay unto ſuch woolcomber, or his wife or child, double coſts; and all judges and juries, and other perſons whatſoever, are to take notice of this preſent act, and conform thereto. *ſ.* 1.

Juſtices may ſummon woolcombers to make oath of their legal ſettlement.

It ſhall be lawful for two juſtices, where any ſuch woolcomber, or his wife or child, ſhall ſet up any trade, to cauſe him or her to be ſummoned before them in the town or place where they ſhall ſet up ſuch trade, in order to make oath of the place of his or her laſt legal ſettlement, and they are to obey ſuch ſummons, and make oath accordingly; and ſuch juſtices are to give an atteſted copy of ſuch affidavit ſo made before them to the perſon making the ſame, in order that he or ſhe may produce it when required; which atteſted copy ſhall be admitted as evidence as to ſuch laſt legal ſettlement, at any general or quarter ſeſſions: and in caſe any ſuch woolcomber, or his wife or child, ſhall again be ſummoned to make oath as aforeſaid, then, on ſuch atteſted copy of the oath formerly taken being produced, ſuch woolcomber, or his wife or child, ſhall not be obliged to take any other oath with regard to their ſettlement, but ſhall leave a copy of ſuch atteſted copy, if required. *ſ.* 2.

Act not to prejudice the univerſities.

This act ſhall not be prejudicial to the privileges of the univerſities of *Cambridge* and *Oxford*; or extend to give liberty to any perſon to ſet up the trade of a vintner, or to ſell any wine or other liquor within the ſaid univerſities without licence firſt had from the vice chancellor. *ſ.* 3.

Settlement by Birth.

Reputed parents may be witneſſes to prove the illegitimacy of their children.

THE reputed parents may be called as witneſſes to prove the illegitimacy of their children.—Thus in the *K.* v. *the inhabitants of Bramley*, *Tr. Term*, 35 *G. III.* two juſtices by an order removed *Sarah Ward*, widow of *James Ward*, deceaſed, *and her three children*, from *Leeds* to *Bramley*. Againſt this order the latter pariſh appealed to the

the ſeſſions. On the hearing of the appeal, the reſpondents produced evidence of the ſettlement of *James Ward* being at *Bramley*: and, in order to prove the marriage of the ſaid *James Ward* with the ſaid *Sarah Ward*, they produced witneſſes who proved that they had cohabited and lived together as man and wife, and were reputed to be man and wife until the death of *James Ward*. *The appellants offered to produce* Sarah Ward *as a witneſs to prove that ſhe never was married*, or that, if ſhe ever was, the ceremony took place in *Ireland*, under ſuch circumſtances as (the appellants contended) by the laws of *Ireland* rendered it wholly void. They alſo offered witneſſes to prove declarations made both by *James Ward* and *Sarah Ward*, at different times, that they never were married. *The reſpondents inſiſted that the evidence offered by the appellants was inadmiſſable*; and the ſeſſions being of that opinion rejected the ſame, and confirmed the order of the two juſtices, ſubject to the opinion of the court of *King's Bench*, whether the evidence offered by the appellants was admiſſable or not?—By lord *Kenyon* Ch. J. This evidence was certainly admiſſible, though the juſtices at the ſeſſions were to judge of the effect of it: in the caſe of the *K.* v. *the inhabitants of* St. Peter's, it was expreſsly held that the ſuppoſed huſband was a competent witneſs to diſprove the marriage. *There are alſo many other caſes in which it has been decided, that the parents may be called as witneſſes with reſpect to* THE LEGITIMACY *of their iſſue: and if they may be called to prove that they are legitimate children, there is no reaſon why they ſhould be conſidered as incompetent when called to prove that the children are illegitimate.* But in all theſe caſes ſuch teſtimony is open to great obſervation. Caſe ſent back to ſeſſions. *6 Durnf. & Eaſt*, 330.

Children obtain a ſettlement from a father who becomes attainted.

Though a perſon become attainted, yet the ſettlement which that perſon may have acquired before the attainder, is communicated to ſuch of his children as may be born afterwards.—This was decided in the *K.* v. *the inhabitants of St. Mary, Cardigan, Mic. Ter.* 35 *Geo. III.* which was as follows:—Two juſtices removed a woman and three children from the pariſh of *St. Mary*, in *Cardigan*, to the pariſh of *Llanvihangel Yſtrad*: on appeal, the ſeſſions quaſhed the order, ſubject to the opinion of the court on the following caſe:—The huſband of the pauper gained a legal ſettlement in the pariſh of *Llanvihangel Yſtrad*, in 1767; he was afterwards tried for ſheep-ſtealing, and was

was convicted, and had ſentence of death paſſed upon him at *Cardigan* ſpring ſeſſions, in the year 1770, but eſcaped from gaol before the time appointed for his execution. *Two years afterwards he returned to* Cardigan, *and continued there till the year* 1792, *and during that time married a wife, by whom he had two ſons, and on her deceaſe he married another woman, by whom he had a daughter.* In the ſaid year 1792, he again abſconded, whereby his wife and the aforeſaid three children became chargeable to the pariſh of *St. Mary*, in *Cardigan*.—It was contended in ſupport of the order of ſeſſions, that the attainder of the huſband had deſtroyed all his rights, and among them the right of afterwards communicating his ſettlement to his wife and children, which is a civil privilege.—By lord *Kenyon* Ch. J. This is a new caſe in the law of ſettlements, but I cannot bring my mind to doubt about it. *A ſettlement is not the property of any man; it cannot eſcheat:* neither can it be called a franchiſe; in the caſe of a franchiſe it has been rightly decided, that by attainder the franchiſe is loſt; but *this perſon was before his attainder ſettled in the pariſh to which the paupers were removed, and I think the father's ſettlement was communicated to them*, and that the juſtices at the ſeſſions were miſtaken *. By THE COURT, Order of ſeſſions quaſhed. 6 *Durnf. & Eaſt*, 116.

PREMISSES OF CHARITABLE INSTITUTIONS RATEABLE.

IF a houſe and premiſſes be aſſigned for the habitation and uſe of a perſon appointed to the management of a charitable inſtitution, the ſame are rateable to the poor; for this being part of the emoluments of the appointment, the party is to be conſidered as a beneficial occupier thereof.—This was decided in the caſe of the *K.* v. *John Call*, 35 *G. III.* which was as follows:—The defendant appealed to the *Suffolk* ſeſſions againſt a poor rate for *Woodbridge* pariſh, on ſeveral grounds, one of which was *the omiſſion of the Rev.* R. Dyer, *the occupier of a houſe and garden in the ſame pariſh.* THE SESSIONS confirmed the rate, ſubject to the opinion of the court on the following caſe. *Dyer*, who was omitted in the rate, was occupier

Officers of charitable inſtitutions occupying premiſſes aſſigned for their uſe.

* Lord *Kenyon* added, that it would be a doubt whether the man *himſelf* could acquire a ſettlement after the attainder.

of

of a houſe and garden of the yearly value of 10*l.* and upwards which he held as maſter of a free ſchool in the ſame pariſh, by appointment of the miniſter and inhabitants of the pariſh, under and by virtue of a certain deed of indenture, bearing date 2d *September*, 1662, and made between the parties therein named, in which *the ſaid meſſuage, yards, gardens, and all appurtenances thereunto belonging, ſituate in the pariſh, were aſſigned for the habitation of the maſter, and for the uſe of him and his family, without payment of any rent, income, gift, ſum of money, or other allowance whatſoever, for or out of the ſame*, together with two acres and a half of paſture land in the ſame pariſh, and alſo three rent charges on lands in different pariſhes, amounting to 25*l. per annum*, for the teaching of 10 boys, ſons of the meaner ſort of inhabitants of the pariſh of *Woodbridge*. *Dyer* became maſter of the ſchool in 1774; no rates had ever been paid for the houſe and garden, but *Dyer* let the two acres and half of charity land, for which the ſeveral occupiers were rated in the ſaid rate. In ſupport of the order of ſeſſions, the principal arguments were, that the maſter of this free ſchool ſtood exactly in the ſame ſituation as the ſervant of Mr. *Waldo*, who was put into a houſe, and paid for ſuperintending and inſtructing 10 girls there, which houſe was held not rateable: that as to what was ſaid in the caſe of *St. Luke's Hoſpital*, that any officer of a public charity occupying any part of the building beneficially would be liable to be rated, that only related to public charities, and not to a parochial charity, like the preſent, where the pariſh were bound by their own agreement to give the maſter his houſe free from any *onus*.—Lord *Kenyon* Ch. J. (ſtopping the other ſide.) To the authority of the caſes cited I ſubſcribe my aſſent. They proceeded on the ground that there was no occupier. In the *K.* v. *Waldo*, the rate was held to be bad, becauſe there was no occupier; the poor children who were placed there for education could not be conſidered as occupiers, neither could the woman ſervant who ſuperintended them. That caſe could not be diſtinguiſhed from that of *St. Luke's Hoſpital*, where the rate was alſo quaſhed, becauſe there was no beneficial occupier; but *when a caſe ariſes where a perſon is found to be the beneficial occupier of a houſe, he muſt be rated, though the houſe be appropriated to charitable purpoſes:* as long as *Richmond Park* continued in the hands of the king it was not

rateable; but when the ranger made profits of it, and beneficially occupied it, it was held to be rateable in his hands: so *if this perſon had been put in merely to look after the pupils, and had not occupied the houſe, he would not have been rateable;* but it appears that he *is the beneficial occupier of this houſe and garden. If every individual in the pariſh had agreed* not to take advantage of the omiſſion of this perſon in the rate, perhaps no one could afterwards have objected to it; *but that is not the caſe here.* The perſons who made this rate ſeem to have acted honourably as far as reſpects themſelves; but if there be any individual in the pariſh who objects to the omiſſion of the defendant, the objection muſt prevail. This perſon was appointed by deed, and only thoſe who are parties to a deed are bound by it.—*Aſhhurſt* J. was of the ſame opinion.—*Groſe* J. In this caſe there is an occupier. That part of the land, given for the ſame purpoſes, in this caſe, which is let out, is rated in the hands of the ſeveral occupiers; no objection is made to that part of the rate, and I cannot diſtinguiſh between the houſe and garden occupied by this perſon, and the land ſo let to thoſe occupiers; the party omitted is a beneficial occupier of the property for which he is rated; then here is that perſon an occupier, who could not be found in the caſe of *St. Luke's Hoſpital*, —*Lawrence* J. concurred.—Order of ſeſſions quaſhed. 6 *Durnf. & Eaſt*, 333.

H. 32 *G. III.* LEWIS *againſt* POTTLE.

THE debt in a former action between theſe parties was under 10*l*. but being increaſed by the coſts in that action, in which the plaintiff recovered, the defendant was held to bail in an action brought on that judgment. And in the laſt term

A defendant may be held to ſpecial bail in an action on a judgment, for 10*l*. for damages and coſts; though the original debt alone were under 10*l*.

Lens obtained a rule to ſhew cauſe why he ſhould not be diſcharged on filing common bail; on theſe authorities, *Palmer* v. *Needham*, 3 *Burr.* 1389; *Belither* v. *Gibbs*, 4 *Burr.* 2117; *Buſh* v. *Bates*, 5 *Burr.* 2660; and an anonymous caſe in *Cowp.* 128.

Marryatt ſhewed cauſe againſt this rule, and ſaid that a contrary rule was eſtabliſhed in *Nightingale* v. *Nightingale*, in the common pleas; 2 *Bl. Rep.* 1274.

Lord KENYON, Ch. J. then ſaid that as a different practice had prevailed in the different courts, it was pro-

per that a conference ſhould be had with the judges of the common pleas, in order to make the practice in future uniform. And accordingly, on this day, he ſaid that the judges of this court had conſulted with thoſe of the common pleas, and that the reſult of it was that they had agreed to conform to the practice of the other court, by which a perſon under ſimilar circumſtances with the defendant may be held to ſpecial bail. And they

Diſcharged the Rule.

Review of Law Books.

Reports of Caſes argued and determined in the Court of Exchequer, from Eaſter Term 32 George III. to Trinity Term 33 George III. both incluſive. By Alexander Anſtruther, Eſq. of Lincoln's Inn, Barriſter at Law. 2 *vols.* 8*vo* 18*s. boards.* Clarkes, 1796.

IT is remarkable that while the preſs teems with reports of the modern deciſions of the other courts in Weſtminſter-hall, the adjudications in the Exchequer ſeem to be almoſt totally diſregarded. At this particular period indeed it excites our utmoſt aſtoniſhment; as the public neceſſities have lately ſo much increaſed the burthens impoſed on the ſubject, and extended the operations of the proceſs of the crown, that the determinations of a revenue court muſt be peculiarly intereſting, important, and of general utility.

Mr. Anſtruther, in his preface, very pertinently obſerves, rhat, "Suits for tythes alſo have generally been "proſecuted on the equity ſide of this court; and from "long practice, are conſidered as being peculiarly within "its juriſdiction. The magnitude of this ſpecies of "property, and the ſingularity of its nature, require that "the rules by which it is governed ſhould be generally "known."

Several deciſions reſpecting tythes are introduced among theſe reports, which will be found extremely uſeful to the patrons and incumbents of rectories and vicarages, as well as to the reſpective pariſhioners, who are required to advance their legal proportions towards the maintenance of the clergy.

Many

Many important ſubjects of legal enquiry are peculiar to the court of Exchequer, and the modern deciſions upon ſuch eſſential points ought to be regularly communicated to the public. Mr. Anſtruther will deſerve the thanks of the practiſers of the law, if he ſhould continue his reports for their information and emolument.

Supply without Burthen; or Eſcheat vice Taxation: being a Propoſal for a ſaving in Taxes by an Extenſion of the Law of Eſcheat: including Strictures on the Taxes on Collateral Succeſſion, compriſed in the Budget of 7th December, 1795. To which is prefixed a Proteſt againſt Law Taxes: ſhewing the peculiar Miſchievouſneſs of all ſuch Impoſitions as add to the Expence of an Appeal to Juſtice. By Jeremiah Bentham, of Lincoln's Inn, Eſq. 8vo 3s. *ſewed.* Debrett.

AFTER propoſing a Saving in Taxes by an Extenſion of the Law of Eſcheat, Mr. Bentham obſerves that ſtamp-duties, which form a conſiderable part of the revenue, are highly impolitic and oppreſſive, and that any other ſource of ſupply would be leſs miſchievous to the community. He does not, however, merely ſtate his objections to *Law-taxes*, but propoſes a plan by which, ſuppoſing them to be aboliſhed, he conceives the revenue would be improved to a degree much more than adequate to the deficiency.

The author expatiates, with great ſtrength and clearneſs of expreſſion, on the heavy preſſure of law-taxes, on certain parts of the community. "Juſtice," ſays he, "is the ſecurity which the law provides us with, or profeſſes to provide us with, for every thing we value, or ought to value; for property, for liberty, for honour, and for life. It is that poſſeſſion which is worth all others put together, for it includes all others. A denial of juſtice is the very quinteſſence of injury, the ſum and ſubſtance of all ſorts of injuries. It is not robbery only, enſlavement only, inſult only, homicide only: it is robbery, enſlavement, inſult, homicide, all in one. The ſtateſman who contributes to put juſtice out of reach, the financier who comes into the houſe with a *law-tax* in his hand, is an acceſſary after the fact to every crime: every villain may hail him bro-

" ther, every malefactor may boaſt of him as an accom-
" plice."

Mr. Bentham's Pamphlet is ſo pregnant with good ſenſe and originality of argument, that we are determined to enrich our Miſcellany with a farther extract from it.

He aſſerts that " Taxes upon law proceedings fall upon
" a man, juſt at the time when the likelihood of his
" wanting that ability is at the utmoſt. When a man
" ſees more or leſs of his property unjuſtly withholden
" from him, then is the time taken to call upon him for
" an extraordinary contribution. When the back of the
" innocent has been worn raw by the yoke of the oppreſ-
" ſor, then is the time which the appointed guardians of
" innocence have thus pitched upon for loading him with
" an extraordinary burthen. Moſt taxes *are*, as *all taxes*
" *ought to be*, taxes upon *affluence;* it is the characteriſtic
" property of this to be a tax upon *diſtreſs*. A tax
" on bread, though a tax upon conſumption, would
" hardly be thought a good tax; bread being reckoned
" in moſt countries where it is uſed, among the neceſſa-
" ries of life. A tax on bread, however, would not be
" near ſo bad a tax as one on law-proceedings: a man
" who pays to a tax on bread may, indeed, by reaſon of
" ſuch payment, be unable to get ſo much bread as he
" wants, but he will always get *ſome* bread; and in pro-
" portion as he pays more and more to the tax, he will
" get more and more bread. Were a three-penny ſtamp
" to be put upon every three-penny loaf, a man who had
" but three-pence to ſpend in bread, could no longer indeed
" get a three-penny loaf, but an obliging baker could cut
" him out the *half of one*. A tax on juſtice admits of no
" ſuch retrenchment: the moſt obliging ſtationer could
" not cut a man out *half* a *latitat*, or half a *declaration*.
" Half juſtice, where it is to be had, is better than no
" juſtice; but without buying the whole weight of paper,
" there is no getting a grain of juſtice. A tax on a neceſſary
" of life can only leſſen a man's ſhare of that particular
" ſort of article: a tax on juſtice may deprive a man, and
" that in any proportion, of all ſorts of neceſſaries."

Date to Acts of Parliament.

BY the 33 *G. III. c.* 13. After reciting, that in every Act of Parliament in which the commencement thereof is not directed to be from a ſpecified time, it doth commence from the firſt day of the ſeſſion of parliament in which ſuch act was paſſed, which is liable to great injuſtice; to remedy which it is enacted, that the clerk of the parliaments ſhall indorſe (in Engliſh) on every act of parliament which ſhall paſs after the 8th of April, 1793, immediately after the title thereof, the day, month, and year when the ſame paſſed and received the royal aſſent; which indorſement ſhall be taken to be the date of its commencement, where no other commencement ſhall be therein provided.

When Acts of Parliament ſhall take Date.

Legacy Act.

36 *G III. c.* 52. *An Act for repealing certain Duties on Legacies and Shares of Perſonal Eſtates, and for granting other Duties thereon, in certain Caſes.*

[26th *April*, 1796.]

BY the 36 *G. III. c.* 52. the acts of 20 *G. III. c.* 28. 23 *G. III. c.* 58. *and* 29 *G. III. c.* 51. impoſing duties on Legacies are repealed, and new duties are granted in lieu thereof, and ſo much of the ſaid acts as relate to ſuch Duties ſo repealed, and the payment thereof are alſo repealed, *ſ.* 1.

Preamble. 20 *G. III. c.* 28. 23 *G. III. c.* 58. and 29 *G. III. c.* 51.

And it is enacted, that upon every Legacy, ſpecific or pecuniary, or of any other Deſcription, of the Amount of Twenty Pounds or more, given by any Will of any Perſon dying after the paſſing of this Act, out of the Perſonal Eſtate of the Perſon ſo dying, and alſo upon the clear Reſidue, and upon every Part of the clear Reſidue of the Perſonal Eſtate of every Perſon who ſhall ſo die, whether teſtate or inteſtate, and leave Perſonal Eſtate of the Value of One hundred Pounds or upwards, after deducting Debts, Funeral Expences, and other Charges, and ſpecific and pecuniary Legacies, (if any), whether the Title to ſuch Reſidue, or to any Part thereof, ſhall accrue by virtue of any Teſtamentary Diſpoſition, or upon Inteſtacy, there ſhall be paid for the Uſe of His Majeſty, after the Rates and in Manner following; (that is to ſay), where any ſuch Legacy, or any Reſidue of any ſuch Perſonal

New Duties on Perſonal Eſtate of Perſons dying teſtate or inteſtate.

ſonal Eſtate, ſhall be given or ſhall paſs for the Benefit of *a Brother or Siſter of the Deceaſed*, or any *Deſcendant of a Brother or Siſter of the Deceaſed*, there ſhall be charged a Duty of *Two Pounds* for every £100, and ſo after the ſame Rate for any greater or leſs Sum; where any ſuch Legacy, or any Reſidue of any ſuch Perſonal Eſtate, ſhall be given or ſhall paſs for the Benefit of a *Brother or Siſter of a Father or Mother* of the Deceaſed, or any *Deſcendant of a Brother or Siſter of a Father or Mother* of the Deceaſed, there ſhall be charged *Three Pounds* for every £100 of the Value of ſuch Legacy, or Reſidue, and after the ſame Rate for any greater or leſs Sum; and where any ſuch Legacy, or Reſidue of any ſuch Perſonal Eſtate, ſhall be given or ſhall paſs for the Benefit of a *Brother or Siſter of a Grandfather or Grandmother* of the Deceaſed, or any *Deſcendant of a Brother or Siſter of a Grandfather or Grandmother* of the Deceaſed, there ſhall be charged a Duty of *Four Pounds* for every £100, of the Value of ſuch Legacy, or Reſidue, and after the ſame Rate for any greater or leſs Sum; and where any ſuch Legacy, or Reſidue of any ſuch Perſonal Eſtate, ſhall be given or ſhall paſs for the Benefit of any Perſon *in any other Degree of collateral Conſanguinity* to the Deceaſed than is herein-before deſcribed, or any Stranger in Blood to the Deceaſed, there ſhall be charged a Duty of *Six Pounds* for every £100 of the Value of ſuch Legacy, or Reſidue, and after the ſame Rate for any greater or leſs Sum: Provided, that nothing herein ſhall extend to charge with any Duty any Legacy, or any Reſidue of any Perſonal Eſtate, which ſhall be given or ſhall paſs for the *Benefit of the Huſband and Wife* of the Deceaſed, or for the Benefit of *any of the Royal Family*.

Duties not to extend to Bequeſts to Huſbands or Wives, or the Royal Family.

Such Duties to be under the Management of the Commiſſioners for Stamps, who are required to cauſe Four new Stamps to be provided to denote the ſeveral Rates of Duty hereby impoſed. *ſ.* 3.

To be managed by the Commiſſioners of Stamps.

And the Commiſſioners, by Writing under their Hands and Seals, ſhall appoint proper Perſons in the ſeveral Counties, &c. to be Receivers of ſuch Duties, who ſhall keep Accounts thereof, ſhewing the Perſonal Eſtates in reſpect of which the Duties have been paid. And the Commiſſioners are alſo required to provide printed Receipts. *ſ.* 4, 5.

Receivers to be appointed

And the Duties hereby impoſed ſhall, if not hereby otherwiſe provided, be accounted for, and paid, by the Perſon

Duties to be paid by Executors or

Perſon or Perſons having the Burthen of the Execution of the Will, or the Adminiſtration of the Perſonal Eſtate of any Perſon deceaſed, upon Retainer for his own Benefit, or for the Benefit of any other Perſon, of any Legacy, or Part of any Legacy, or of the Reſidue of any Perſonal Eſtate, or any Part of ſuch Reſidue, which he ſhall be entitled ſo to retain, either in his own Right, or in the Right of any other Perſon; and alſo upon Delivery, Payment, or other Satisfaction or Diſcharge whatſoever, of any Legacy, or any Part, or of the Reſidue of any Perſonal Eſtate, or any Part, to which any other Perſon ſhall be entitled; and in caſe any Perſon having or taking the Burthen of ſuch Execution or Adminiſtration as aforeſaid, ſhall retain for his own Benefit, or for the Benefit of any other Perſon, any Legacy, or any Part, or the Reſidue of any Perſonal Eſtate, or any Part, which ſuch Perſon ſhall be entitled ſo to retain, either in his own Right, or in the Right or for the Benefit of any other Perſon, and upon which any Duty ſhall be chargeable by virtue of this Act, not having firſt paid ſuch Duty, or ſhall deliver, pay, or otherwiſe ſatisfy or diſcharge, any Legacy, or any Part, or the Reſidue of any Perſonal Eſtate, or any Part thereof, to which any other Perſon ſhall be entitled, and upon which any Duty ſhall be chargeable by virtue of this Act, having received or deducted the Duty ſo chargeable, then the Duty which ſhall be due upon every ſuch Legacy, &c. and Part of, which ſhall not have been duly paid to His Majeſty, according to the Proviſions of this Act, ſhall be a Debt of ſuch Perſon having the Burthen of ſuch Execution or Adminiſtration, to His Majeſty; and in caſe any ſuch Perſon or Perſons ſo having or taking the Burthen of ſuch Execution or Adminiſtration, ſhall deliver, pay, or otherwiſe ſatisfy or diſcharge any ſuch Legacy or Reſidue, or any Part of any ſuch Legacy or Reſidue, for the Benefit of any Perſon entitled thereto, without having received or deducted the Duty chargeable thereon, (ſuch Duty not having been firſt duly paid to His Majeſty,) then in every ſuch Caſe ſuch Duty ſhall be a Debt to His Majeſty, both of the Perſon who ſhall make ſuch Delivery, Payment, Satisfaction, or Diſcharge, and of the Perſon to whom the ſame ſhall be made. *ſ. 6.*

Adminiſtrators on retaining or paying Legacies.

If Duty be not paid before Legacies are retained by Executors, or diſcharged, they having deducted it, the Amount to be a Debt from them to His Majeſty; and if they pay Legacies without deducting the Duty, it ſhall be a debt from both Parties.

And any Gift by any Will of any Perſon dying after the paſſing of this Act, which ſhall, by virtue of ſuch Will,

What ſhall be deemed Legacies within the

Intent of Act.

Will, have Effect, or be ſatisfied out of the Perſonal Eſtate of ſuch Perſon ſo dying, or out of any Perſonal Eſtate which ſuch Perſon ſhall have Power to diſpoſe of as he ſhall think fit, ſhall be deemed to be a Legacy within the Intent and Meaning of this Act, whether given by way of Annuity or in any other Form, and whether it ſhall be charged only on ſuch Perſonal Eſtate, or charged alſo on Real Eſtate of the Teſtator; except ſo far as the ſame ſhall be paid out of ſuch Real Eſtate, in a due Execution of the Will by which the ſame ſhall be given; and every Gift which ſhall have Effect as a Donation *Mortis Cauſa*, ſhall alſo be deemed a Legacy within the Intent and Meaning of this Act. *ſ.* 7.

Value to be calculated.

And the Value of what is given by way of Annuity, whether paid Annually or otherwiſe, is to be calculated according to the Tables annexed to this Act. And the Duty on Legacies given to purchaſe Annuities ſhall be calculated on the Sums neceſſary to purchaſe them. And the Duty on Legacies, whoſe Value can only be aſcertained by the application of the allotted Fund, ſhall be charged on the Money as applied. *ſ.* 8, 9, 10, 11.

Legacies in Succeſſion.

Reſpecting the Duty on Legacies enjoyed by Perſons in Succeſſion having partial Intereſts therein, the Directions are given in the Twelfth and Thirteenth Sections.

The Duty on Legacies enjoyed in Succeſſion, is to be charged as ſuch, whether taken under Wills or by Inteſtacy; and the Duty on Legacies in Joint Tenancy, is to be in proportion to the Intereſt of the Parties. *ſ.* 14, 15, 16.

Contingencies.

The Duties on Legacies, ſubject to Contingencies, to be given as abſolute Bequeſts. *ſ.* 17.

Duty on Legacies ſubjected to Power of Appointment, ſhall be charged as Property given to different Perſons in Succeſſion. *ſ.* 18.

Plate, &c. while enjoyed in Kind, not liable to Duty till in Poſſeſſion of Perſons having Power to diſpoſe thereof.

But no Duty ſhall be paid on any Articles of Plate, Furniture, or other Things, not yielding an Income, and given for the Benefit of different Perſons in Succeſſion, whilſt the ſame ſhall be ſo enjoyed in Kind only by any Perſon not having any Power of diſpoſing thereof, ſo as to convert the ſame into Money or other Property yielding an Income; but if the ſame ſhall be actually diſpoſed of, or ſhall come to any Perſon having Power to diſpoſe thereof, or having an abſolute Intereſt therein, then, the ſame Duty ſhall be paid thereon as if the ſame had been originally given abſolutely, and with full Power to diſpoſe

thereof, and ſhall be chargeable upon and paid by the Perſon for whoſe Benefit the ſame ſhall be ſold. *ſ.* 14.

How on Perſonal Eſtates directed to applied in Purchaſe of Real Eſtates

And any Sum of Money or Perſonal Eſtate, directed to be applied in the Purchaſe of Real Eſtate, ſhall be charged with Duty as Perſonal Eſtate; unleſs the ſame ſhall be ſo given as to be enjoyed by different Perſons in Succeſſion, and then each Perſon entitled thereto in Succeſſion, ſhall pay Duty for the ſame in the ſame Manner as if the ſame had not been directed to be applied in the Purchaſe of Real Eſtate, unleſs the ſame ſhall have been actually applied in the Purchaſe of Real Eſtate before ſuch Duty accrued; but no Duty ſhall accrue in reſpect thereof, after the ſame ſhall have been actually applied in the Purchaſe of Real Eſtate, for ſo much thereof as ſhall have been ſo applied: Provided nevertheleſs, that in caſe before the ſame or ſome Part thereof ſhall be actually ſo applied, any Perſon ſhall become entitled to an Eſtate of Inheritance in Poſſeſſion in the Real Eſtate to be purchaſed therewith, or with ſo much thereof as ſhall not have been applied in the Purchaſe of Real Eſtates, the ſame Duty which ought to be paid by ſuch Perſon, if abſolutely entitled thereto as Perſonal Eſtate by virtue of any Bequeſt thereof as ſuch, ſhall be charged on ſuch Perſon, and raiſed and paid out of the Fund remaining to be applied in ſuch Purchaſe. *ſ.* 19.

Eſtates *pur auter Vie.*

And Eſtates *pur auter Vie*, applicable by Law in the ſame Manner as Perſonal Eſtate, ſhall be charged with the Duties hereby impoſed as Perſonal Eſtate. *ſ.* 20.

Money left to pay Duty not chargeable as a Legacy.

Provided always, That if any Direction ſhall be given by any Will for the Payment of the Duty chargeable upon any Legacy or Bequeſt out of ſome other Fund, ſo that ſuch Legacy or Bequeſt may paſs to the Perſon for whoſe Benefit the ſame ſhall be given, free of Duty, no Duty ſhall be chargeable upon the Money to be applied for the Payment of ſuch Duty, notwithſtanding the ſame may be deemed a Legacy for the Benefit of the Perſon who would otherwiſe pay ſuch Duty. *ſ.* 21.

Mode of aſcertaining Duty on Property not reduced into Money.

In Caſes of ſpecific Legacies, and where the Reſidue of any Perſonal Eſtate ſhall conſiſt of Property which ſhall not be reduced into Money, it ſhall be lawful for the Perſon having the Burthen of the Adminiſtration of ſuch Effects, or the Perſon by whom the Duty thereon ought to be paid, to ſet a Value thereon, and offer to pay the Duty according to ſuch Value; or to require the Com-

miſſioners of the Stamp Duties, to appoint a Perſon to ſet ſuch Value, at the Expence of the Perſon by whom ſuch Duty ought to be paid; and the Commiſſioners may accept the Duty offered to be paid, upon the Value ſet by the Perſon having the Adminiſtration of ſuch Effects, or by whom the Duty ſhall be payable, without ſuch Appraiſement, if the ſaid Commiſſioners ſhall think fit; but if they ſhall not be ſatisfied with the Value ſo ſet, it ſhall be lawful for the ſaid Commiſſioners to appoint a Perſon to appraiſe ſuch Effects, and to ſet the Value thereon, on which Value ſo ſet the ſaid Commiſſioners ſhall aſſeſs the Duty in reſpect thereof; but if the Perſon by whom ſuch Duty ſhall be payable, ſhall not be ſatisfied with the Valuation, and pay the Duty accordingly, ſuch Perſon may cauſe the Valuation ſo made under the Authority of the ſaid Commiſſioners, to be reviewed by the Commiſſioners of the Land Tax for the Time being, of the Diſtrict where ſuch Effects ſhall be, at their next Meeting, after the ſaid Commiſſioners for Management of the Stamp Duties ſhall have aſſeſſed and required Payment of ſuch Duty, if Fourteen Days ſhall have elapſed between ſuch Time and the Meeting of the ſaid Commiſſioners of Land Tax, and if not, then at the next ſucceeding Meeting of the ſaid Commiſſioners, of which Appeal Six Days Notice ſhall be given to the ſaid Commiſſioners of Stamp Duties; and the ſaid Commiſſioners of the Land Tax ſhall and may (if they think fit) appoint a Perſon to appraiſe ſuch Effects, and ſet a Value thereon, and ſhall and may hear and determine ſuch Appeal, in the ſame Manner as in any other Caſes of Appeal to them, and with the like Authorities, and their Judgement ſhall be final; and if the Valuation made under the Authority of the ſaid Commiſſioners of the Stamp Duties in the Caſe laſt-mentioned, ſhall not be duly appealed from within the Time aforeſaid, or ſhall be affirmed upon Appeal, the Duty ſhall be paid according to ſuch Valuation; and if any Variation ſhall be made on ſuch Appeal, the Duty ſhall be paid according to ſuch Variation; and if the Duty aſſeſſed in Manner aforeſaid, ſhall exceed the Duty offered to and refuſed by the ſaid Commiſſioners of Stamp Duties, the Expence of ſuch Appraiſement and other Proceedings in aſſeſſing ſuch Duty, ſhall be borne by the Perſon by whom ſuch Duty ſhall be payable; and if any Diſpute ſhall ariſe between any Perſon or Perſons entitled

to

to any ſuch Legacy, &c. and any Perſon having the Burthen of the Adminiſtration of ſuch Effects, with reſpect to the Value thereof, or with reſpect to the Duty to be paid thereon, the Duty ſhall be aſſeſſed by the ſaid Commiſſioners of Stamp Duties on Reference to them by either Party for that Purpoſe; and if the Value of any Property on which ſuch Duty ought to be paid ſhall be in Diſpute, the ſaid Commiſſioners of the Stamp Duties ſhall cauſe an Appraiſement to be made thereof, at the Expence of the Perſon by whom ſuch Duty ought to be paid, in the Manner herein-before directed in other Caſes, and aſſeſs the Duty thereon accordingly; and if ſuch Perſon by whom ſuch Duty ought to be paid, ſhall be diſſatisfied with ſuch Valuation, or with the Aſſeſſment made upon ſuch Valuation by the ſaid Commiſſioners of the Stamp Duties, the ſame ſhall be reviewed and finally determined by the ſaid Commiſſioners of the Land Tax, upon Appeal to them within the Time, and under the Reſtrictions, and in the Manner herein-before directed in other Caſes; but if ſuch Valuation ſhall not be duly appealed from within the Time limited for that Purpoſe, or ſhall be affirmed upon Appeal, the Duty ſhall be paid according thereto; and if any Variation ſhall be made therein on ſuch Appeal, the Duty ſhall be paid according to ſuch Variation; and in caſe the Effects whereon any ſuch Duty ſhall be payable ſhall be at the Diſtance of Ten Miles from *London*, then it ſhall be lawful to make the like Application to ſuch Perſon as ſhall be deputed for that Purpoſe by the ſaid Commiſſioners to act in their Stead, in ſuch Caſes, within the County or Diſtrict in which ſuch Effects ſhall be; and ſuch Perſon ſo deputed ſhall act in ſuch Caſes, in all Reſpects, in the ſame Manner as the ſaid Commiſſioners are hereby authorized to act, ſubject nevertheleſs to the Inſtructions and Controul of the ſaid Commiſſioners. *ſ.* 22.

Duty on Legacies not ſatisfied in Money, &c. to be paid according to the Value of the Satisfaction.

Where any Legacy whereon any Duty ſhall be chargeable by this Act, ſhall be ſatisfied otherwiſe than by Payment of Money or Application of ſpecific Effects for that Purpoſe, or ſhall be releaſed for Conſideration, or compounded for leſs than the Amount or Value thereof, then the Duty ſhall be charged and paid in reſpect of ſuch Legacy, according to the Amount of the Property taken in Satisfaction thereof, or as the Conſideration for Releaſe thereof, or Compoſition for the ſame: Provided always,

that if any Legacy ſhall be made in Satisfaction of any other Legacy, or Title to any Reſidue of any Perſonal Eſtate remaining unpaid, the Duty ſhall not be paid on both Subjects, though both may be chargeable with Duty, but ſhall be paid on the Subject yielding the largeſt Duty. *ſ.* 23.

If Legatees refuſe to accept Legacies, Duty deducted.

If Legatees refuſe to accept Legacies, Duty deducted, the Court, in caſe of Suit, may order them to pay Coſts; and in Suits where the Party ſued may wiſh to ſtop Proceedings on Payment of Bequeſts, deducting Duty, the Court may make Order therein. *ſ.* 24.

If any Suit ſhall be inſtituted concerning the Adminiſtration of Perſonal Eſtate, the Court ſhall provide for the Payment of the Duty. *ſ.* 25.

Executors may diſcharge Legacies on Payment of the Duty accrued.

Provided always, That any Perſon having the Burthen of the Execution of any Will, or the Adminiſtration of the Perſonal Eſtate of any Perſon deceaſed, may from Time to Time pay, deliver, or diſpoſe of any Legacy, or any Part, or make Diſtribution of any Part of the Reſidue of any Perſonal Eſtate, on Payment, from Time to Time, of ſuch Proportions of the Duty hereby impoſed, as ſhall accrue in reſpect of ſuch Part of ſuch Perſonal Eſtate as ſhall be ſo adminiſtered. *ſ.* 26.

Receipts.

No Legacy, liable to Duty, ſhall be paid without a Receipt, containing certain Particulars; and no Receipt ſhall be available unleſs duly ſtamped as required by this Act. *ſ.* 27.

A Penalty of Ten *per Cent.* is impoſed for paying or receiving Legacies without ſtamped Receipts. *ſ.* 28.

Receipts to be ſtamped within 21 Days after Date, on which an acknowledgement of the Duty ſhall be written, &c. Or within Three Months after Date, on Payment of Ten *per Cent.* by way of Penalty for not having before paid ſuch Duty. *ſ.* 29.

But miſtakes in paying Duty may be rectified, if no Suit be inſtituted, on Payment of the Difference within Three Months, and Ten *per Cent.* *ſ.* 30.

Any Perſon paying or receiving Money contrary to this Act, to be indemnified on diſcovering the other Offender within Twelve Months. *ſ.* 31.

In caſe of Infancy, &c.

Where, on Account of Infancy or Abſence, Legacies cannot be paid the Money ſhall be paid into the Bank, and laid out in *Three per Cents.* If Money ſhould be improperly paid in, the Chancery may diſpoſe thereof: and if more than

the

the proper Duties has been paid, the Commiſſioners for Stamps may return the exceſs. If leſs, on Payment of the full Duty, the Chancellor may order re-Payment to the Party. *ſ.* 32.

If it ſhall appear to the Commiſſioners for Stamps, at the end of Two Years after the Death of any Perſon, that it will require Time to collect the Effects, or be difficult to aſcertain the Reſidue of the Perſonal Eſtate, the Duty may be compounded for. And where a Legacy is refunded, the Duty ſhall be repaid. *ſ.* 33, 34. Of compounding.

Executors, previous to retaining their Legacies, ſhall tranſmit the particulars, with an offer of the Duty, to the Commiſſioners of Stamps, who ſhall charge the ſame agreeable to this Act: and, on neglecting to pay the Duty for Fourteen Days, ſhall forfeit treble the Value of ſuch Duty. *ſ.* 35. Executors.

Receipts for Legacies, except thoſe by Wills, reſpecting which the Duties impoſed by the Acts mentioned in the Preamble, are repealed, to be deemed Receipts within the meaning of theſe Acts; and ſuch Receipts to be given for Legacies due at paſſing this Act, and for Legacies becoming due afterwards on which no Duty is hereby impoſed. *ſ.* 36.

If Adminiſtration be made void, and any Duty ſhall have been improperly paid, it ſhall be repaid; but if it ought to have been paid, it ſhall be allowed in Account with the rightful Executor. *ſ.* 37.

A Perſon Swearing Falſely under this Act, with Intent to Defraud His Majeſty, ſhall be deemed guilty of Perjury, and puniſhed accordingly. *ſ.* 38. Swearing falſely.

The Penalty of Altering any Receipt under this Act is £500; and for Forging or Counterfeiting Stamps, Death, without the Benefit of Clergy. *ſ.* 39, 40. Penalty.

Receipts, duly ſtamped, as required by this Act, ſhall be free from all other Duties whatever; but the Powers of former Acts relating to Stamps, are to extend to this Act. Suits for Penalties to commence within Three Months from the Time ſuch Penalties were incurred. And Suits for Penalties incurred without Intention of Fraud, may be ſtopped. *ſ.* 41, 42, 43.

The Commiſſioners of Stamps may reward Informers, but ſuch Rewards ſhall not exceed one-half of the Penalties or Forfeitures recovered. *ſ.* 44.

All

Duties to be paid to the Receiver General of Stamp Duties; and by him paid into the Exchequer.

And all the Monies ariſing from the ſaid Duties hereinbefore granted, and alſo the Duties ariſing from the ſaid former Acts of the 20th, 23d, and 29th Years aforeſaid, not hereby repealed, and all Arrears of the ſaid Rates and Duties hereby repealed, ſhall, from the paſſing of this Act, be paid from Time to Time into the Hands of the Receiver General for the Time being of the Duties on ſtamped Vellum, Parchment, and Paper, who ſhall pay the ſame, the neceſſary Charges of raiſing and accounting for the ſame being deducted, into His Majeſty's Receipt of Exchequer at *Weſtminſter*, at ſuch Time and in ſuch Manner as other Duties on ſtamped Vellum, Parchment, and Paper, are directed to be paid, and the ſame ſhall be carried to and made Part of the Conſolidated Fund. *ſ.* 45, 46.

Actions or Suits commenced in purſuance of this Act, muſt be commenced within Six Calender Months after the Fact committed.

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36 *G. III. c.* 17. *An Act for repealing the Duties on Licenſes to Perſons uſing or exerciſing the Buſineſs of an Horſe Dealer, and granting new Duties in Lieu thereof.*

[24th *December*, 1795.]

Preamble.

WHEREAS it is expedient to repeal the Duties impoſed, by an Act of the Twenty-fourth of *G. III.* on Perſons uſing the Trade and Buſineſs of an Horſe Dealer, and who ſhall take out a Licence to uſe and exerciſe the Trade and Buſineſs of an Horſe Dealer, and to grant new Duties in lieu thereof; it is therefore enacted, That

Preſent Duties on Licences to Horſe Dealers to ceaſe.

the ſeveral Duties on Perſons uſing and exerciſing the Trade and Buſineſs of an Horſe Dealer, and who ſhall take out a Licence to uſe and exerciſe the ſame, impoſed by an Act of 24 *G. III.* ſhall, from and after the paſſing of this Act, ceaſe, except in all Caſes relating to the recovering of any Arrears, which may remain unpaid, of the ſaid Duties on Licences hereby repealed, and to the accounting for the ſame; and except all Licences granted and in Force at and immediately before the paſſing of this Act; and that, after the paſſing of this Act, all the Powers and Authorities given, and the Rules and Regulations eſtabliſhed and preſcribed by the ſaid Act, in relation to the

the managing, ſecuring, aſcertaining, collecting, recovering, levying, and paying, the ſaid Duty on Licenſes, and all Penalties and Forfeitures in reſpect thereof, ſhall ceaſe, except any Penalty or Forfeiture which ſhall have been incurred upon, or any Time before, the paſſing of this Act. *ſ.* 1.

Horſe Dealers, in London, &c. to pay an annual Licence Duty of 20*l.* and without London, &c. 10*l.*

And every Perſon exerciſing the Trade of an Horſe Dealer within the City of *London*, or the City or Liberties of *Weſtminſter*, the Weekly Bills of Mortality, the Pariſhes of Saint *Mary-le-bone* or Saint *Pancras* in the County of *Middleſex*, or the Borough of *Southwark* in the County of *Surrey*, and who ſhall take out a Licence to exerciſe the ſaid Trade, ſhall pay annually, for the Uſe of His Majeſty, the Sum of 20*l.*; and every Perſon exerciſing the ſaid Trade without the City of *London*, the City and Liberties of *Weſtminſter*, the Weekly Bills of Mortality, the Pariſhes of Saint *Mary-le-bone* and Saint *Pancras* in the County of *Middleſex*, and the Borough of *Southwark* in the County of *Surrey*, who ſhall take out a Licence to exerciſe the ſaid Trade, ſhall pay annually the Sum of Ten Pounds. *ſ.* 2.

And ſuch Duties ſhall be under the Management of the Commiſſioners of Stamps. *ſ.* 3.

Two Commiſſioners may grant Licences, &c

And from and after the paſſing of this Act, any Two or more of His Majeſty's Commiſſioners appointed to manage the Duties charged on ſtamped Vellum, Parchment, or Paper, or ſome Perſon duly authoriſed by them, or any Three or more of them, ſhall grant Licences to ſuch Perſons who ſhall exerciſe the Trade and Buſineſs of an Horſe Dealer, in any City, Town, or other Place, within *Great Britain*, to exerciſe the ſame within ſuch City, Town, or Place, for any Space of Time as herein-after mentioned, not exceeding One Year; and every ſuch Licence ſhall ceaſe on the Twenty-ninth of *September* in the Year for which the ſame ſhall be iſſued; and every ſuch Licence ſhall be in Force until and upon the Twenty-ninth of *September* then next following, and ſhall commence from the Date thereof; and every ſuch Licence taken out for any Year ſubſequent to the Year in which the ſame ſhall be iſſued, ſhall commence from the Twenty-ninth of *September* then next enſuing, and continue in Force until and upon the Twenty-ninth Day of *September* in the ſucceeding Year; and that every ſuch Perſon ſhall take out a freſh Licence for another Year, Ten Days at leaſt before the Expiration of that Year for which he ſhall have

Period of Licences.

Licences to be renewed 10 Days before Expiration.

have been licenſed, if he ſhall continue to exerciſe the ſaid Trade; and ſhall in like Manner renew ſuch Licence from Year to Year, paying down the Sums due on ſuch Licence, as long as he ſhall continue to exerciſe the ſaid Trade. *ſ.* 4.

One Licence ſhall be ſufficient for Two Partners; but ſuch Licence ſhall be confined to the Place mentioned therein. *ſ.* 5.

And the Words *Licenſed to deal in Horſes* ſhall be painted or written in large legible Characters on Places licenſed for the Sale of Horſes, on the Penalty of 10*l.*

Perſons dealing in Horſes after *Jan.* 1, 1796, not having a Licence now in Force, without a Licence agreeable to this Act, liable to the Duties on Riding or Carriage Horſes. *ſ.* 7.

And all the ſeveral Powers, Rules, Directions, and Proviſions, in the Act of 29 *G. III.* in relation to Licences granted to Perſons exerciſing the Trade of an Horſe Dealer, ſhall be in full Force in relation to Licences to be granted to Perſons exerciſing the ſaid Trade under or by virtue of this Act, as fully and effectually as if the ſame had been particularly repeated and re-enacted in this Act. *ſ.* 8.

And the Monies ariſing from the ſaid Duties ſhall be paid to the Receiver-General of the Stamps, and by him paid into the Exchequer. One Moiety to be ſet apart for Ten Years, and the other Moiety to be applied in defraying any increaſed Charge, occaſioned by any Loan of this Seſſion, &c. *ſ.* 9.

Limitation of Actions. And if any Action or Suit ſhall be brought againſt any Perſon for any Thing done in purſuance of this Act, it ſhall be within Six Months after the Fact committed, and ſhall be laid in the County or Place where the Cauſe of Complaint aroſe; and the Defendant, in every Action

General Iſſue. or Suit, may plead the General Iſſue, and give this Act and the Special Matter in Evidence at any Trial to be had thereupon; and if the Jury ſhall find for the Defendant, or if the Plaintiff ſhall be nonſuited, or diſcontinue his or their Action after the Defendant ſhall have appeared, or if upon Demurrer, Judgement ſhall be given againſt

Treble Coſts the Plaintiff, the Defendant ſhall have Treble Coſts, and have the like Remedy for the ſame as any Defendant hath in other Caſes to recover Coſts by Law. *ſ.* 10.

EMPLOYING

Employing another Person's Servant.

AN action will lie for continuing to employ the ſervant of another, after notice, though the perſon ſo continuing to employ the ſervant did not procure him to leave his maſter, or know when he employed him that he was the ſervant of another. This was decided in *Blake* v. *Lanyon*, *Ea. Term*, 35 *Geo. III.* which was as follows:—A ſervant who was retained by the plaintiff to work by the piece, left the plaintiff's ſervice on a diſpute between them, the plaintiff having beaten him: at the time of his departure he had ſome work in hand: he then applied for work to the defendant, who was alſo a currier, and who *employed him, not knowing of his engagement with the plaintiff*; but in the courſe of a few days *afterwards the defendant having been appriſed by the plaintiff that this man was his ſervant, and had left his work unfiniſhed, and being threatened with an action in caſe he continued to employ him, requeſted the ſervant to return to his former maſter, and finiſh his work: this he refuſed, and the defendant continued him in his ſervice.* —By the Court, An action will lie for receiving, or continuing to employ the ſervant of another, after notice, without enticing him away: here no fault could be imputed to the defendant for taking this man into his ſervice in the firſt inſtance, becauſe then he had no notice of his prior engagement with the plaintiff; *but as ſoon as he had notice of that fact, he ought to have diſcharged him.* A perſon who contracts with another to do certain work for him, is the ſervant of that other till the work is finiſhed, and no other perſon can employ ſuch ſervant to the prejudice of the firſt maſter; the very act of giving him employment, is affording him the means of keeping out of his former ſervice. 6 *Durnf.* & *Eaſt*, 221.

Attornies.

Mr. ERSKINE moved, that an Attorney be ſtruck off the Rolls. That application was made on the ground of his having been a ſchoolmaſter, and of never having been articled as an Attorney.

It appeared that this Gentleman had been upon the Rolls of the Court theſe ten years, and therefore the Court

thought the Statute of Limitations had run upon this buſineſs, and that they ought not now to look into it. The Statute of Limitations ran even againſt the King in informations in the nature of *Quo Warranto*.——Rule refuſed.

COURT OF KING's BENCH,

May 8.

THE KING *v.* KIDD WAKE.

SATURDAY the Attorney General prayed the judgment of the Court on Kidd Wake, who had been tried and convicted for hooting, &c. at his Majeſty.

Mr. Juſtice Aſhhurſt addreſſed the priſoner on the enormity of his offence; after which he declared the ſentence of the Court, which was, that he be confined to hard labour in the Houſe of Correction in Glouceſter for the term of Five Years, and during the firſt three months to ſtand once in the pillory, and at the expiration of his impriſonment to find ſecurity for his good behaviour for ten years, in the ſum of One Thouſand Pounds, himſelf in 500l. and two ſureties in 250l. each, and to be further impriſoned in the County Goal till ſuch ſecurity be found.

COURT OF COMMON PLEAS,

April. 26.

CURRIE AND ANOTHER, *v.* WALTER.

LIBEL.

THIS was a caſe of conſiderable importance to the public. It came before the Court, on a motion for a new trial of the action lately brought againſt Mr. Walter, printer of the newſpaper called *The Times*, for a Libel on the character of the Plaintiffs. The libel was in the form of a Law Report, and contained a ſtatement of what Mr. Erſkine had ſaid, on a motion he made in the Court of King's Bench, for a criminal information againſt the Plaintiffs. On the trial, it was proved that the libel was not publiſhed with a malicious intention, and that it contained

tained a true account of Mr. Erſkine's Speech; therefore, the Jury, under the direction of the Learned Judge, found a verdict for the Defendant.

There were two grounds on which Serjeants Adair and Marſhal contended that the Court ought to grant a new trial; the firſt was, that if the Defendant had intended to prove that the libel contained a true report of what paſſed in the Court of King's Bench, he ought to have put on the record a plea of juſtification, and not have given the truth of the libel in evidence under the plea of the general iſſue. The ſecond, and moſt important ground, was, that even if the Defendant had pleaded a juſtification, and in ſupport of that plea had proved that the publication was a true ſtatement of what had paſſed in the Court of King's Bench, ſtill he might be guilty of publiſhing a libel; and this ground the learned Counſel ſaid introduced a new and very important queſtion, "Whether Editors of Newſpapers, Printers, &c. had a right to print and publiſh all ſuch trials and proceedings in Courts of Juſtice as they thought fit to ſelect."

Mr. Serjeant le Blanc, on behalf of the Defendant, contended that the firſt ground on which a new trial was ſolicited, was not tenable, inaſmuch as the Defendant had not on the trial proved the truth of the ſuppoſed libel, but only ſhewn the occaſion on which it was publiſhed, and that he had no intention to ſlander the Plaintiffs; and therefore to put a plea of juſtification on the record, did not become neceſſary. With reſpect to the ſecond ground, he argued with great ability, that it was lawful to publiſh a fair account of what paſſed in Courts of Juſtice, and contended that if it was illegal for Printers to publiſh ſuch reports, it was equally ſo in any other perſons, and the conſequence would be, that all the reports, adjudged caſes, trials, &c. that had been printed and publiſhed, for the inſtruction of the profeſſion, and the information of the Public, might be deemed Libels.

Mr. Serjeant Adair, and Mr. Serjeant Marſhal, went into long and laboured arguments to prove that Editors of Newſpapers might be guilty of publiſhing libels, even for inſerting a true account of the proceedings of Courts of Juſtice, provided ſuch publications produced any injury to an individual.

After the caſe was fully argued on both ſides, the Lord Chief Juſtice ſaid, the Court would take time to conſider

of the firſt ground, which merely related to the forms of pleading.

The ſecond point was of infinite importance to the public. His Lordſhip ſaid, "If the doctrine contended "for by the Plaintiff's Counſel, were to be eſtabliſhed as "Law, all the Reports of Trials at the Old Bailey, and "in other Courts, from the earlieſt period, and that were "even publiſhed by authority, would be libels; *for it "would be impoſſible to draw the diſtinction.*" The Learned Judge hinted, that the opinion of the Court, upon the right of publiſhing Law Reports, was clearly in favour of the Defendant.

To the EDITORS *of the* COUNSELLOR'S MAGAZINE.

GENTLEMEN,

THE incloſed caſe is curious on ſeveral accounts; but it is principally ſo from the arguments of the counſel, all of whom ſhone eminently at the bar about half a century ago: their memories are ſtill deſervedly revered The counſel for the Crown was Sir *Philip Yorke*, attorney-general, [created Lord *Hardwicke* in 1733, appointed Chancellor in 1736, created Viſcount *Royſton* and Earl of *Hardwicke* in 1754.] The counſel for the Priſoner were Mr. Serjeant *Daniel*, and Mr. *Strange*, [afterwards Sir *John Strange*, Maſter of the Rolls.] You will pardon me for begging you will honour the caſe with prompt inſertion, or aſſign your reaſons for rejecting it.

Your's, &c.

HASSEL'S CASE.

It is felony in a ſervant of the poſt-office to ſteal a ſingle bank note from a letter committed to his care.

AT the Old Bailey, on Friday the 16th of October, 1730, *Thomas Haſſel* was tried before Lord Chief Juſtice *Raymond*, preſent Mr. Juſtice *Denton*, and Mr. Baron *Comyns*, on the ſtatutes 2 *G. II. c.* 25, *ſ.* 3; and 12 *Ann. c.* 7. for ſtealing *one bank note* of fifty pounds, the property of *John Arden*, in the dwelling-houſe of *Edward Carteret, and Edward Harriſon*, Eſquires.

It appeared in evidence, that the gentlemen in whoſe dwelling-houſe the felony was ſaid to be committed were the Poſtmaſters-General; that the priſoner was employed by

by them in the poſt-office, in the capacity of a *ſorter of letters*; that the bank-note deſcribed in the indictment had been ſent by the poſt, in a letter from Mr. *John Arden* of Mancheſter, directed to Mr. Bury in London; and that the priſoner had received the money for it from the Bank, by the hands of one *Mitton*, a ticket-porter, the day after that on which the letter would arrive in town by the regular courſe of poſt.

Before the priſoner entered on his defence, his counſel ſubmitted two objections to the conſideration of the court —FIRST, that the evidence, admitting it to be true, only proved that the priſoner was guilty of an embezzlement, and breach of truſt and not of larceny, within the true and legal definition of that crime.—SECONDLY, admitting that the taking was ſufficient to ſatisfy the legal notion of larceny, yet the ſubject of it was not within the terms or meaning of the Act of 2 *G. II. c.* 25.

Upon the *Firſt Point* they argued, that the priſoner, from the nature of his office, and the extent of the truſt repoſed in him, was, under the circumſtances of this caſe, diſcharged from all criminal reſponſibility. He was employed at the General Poſt-Office as a *ſorter of letters*, and had accordingly given ſecurity, to a very conſiderable amount, for the faithful performance of his duty. The mail contained many bags, and each bag a great number of letters, and upon their arrival at the office, they were immediately delivered into the cuſtody of the ſorters, whoſe buſineſs is to arrange them according to their reſpective directions, for the purpoſe of their being afterwards delivered. The delivery of the bags gives *the ſorters* an *entire poſſeſſion*, upon a truſt that they will not violate the confidence repoſed in them; for whoever ſends letters by the hands of others, repoſes in the integrity of thoſe into whoſe hands they are committed; and if any miſtake or abuſe happen, though it may amount to a high and aggravated miſdemeanour, and though they or their ſecurities may be civilly liable for the amount of the loſs, yet it is no felony. This diſtinction is ſo completely eſtabliſhed by the known rules of the Common Law, that it would be trifling with the time of the Court to cite precedents in ſupport of it. The Legiſlature have themſelves acted upon and confirmed this rule of law; for by the 9 *Ann. c.* 10. *ſ.* 40. they have expreſsly provided for this offence, by inflicting a penalty of twenty pounds, with incapacity

of

of office, upon any perſon who ſhall preſume, wittingly, willingly, and knowingly, to open or detain any letter after its delivery at the Poſt-Office, and before its delivery to the perſon to whom it is directed, without an order for that purpoſe under the hand of the Secretary of State. It is apparent, therefore, that this penalty was all the puniſhment which the law intended to inflict upon this offence; for it cannot be contended that the priſoner is within the 21 *H. VIII. c.* 7. which makes it felony for *ſervants* to rob their maſters; that act requiring that the maſter ſhould be the owner of the goods; and it is clear that the priſoner was not ſervant to the owner of the note. It indeed furniſhes a ſtrong argument that ſervants entruſted with their maſter's goods were not guilty of felony by the common law for taking them away *.

Upon the *Second Point* they contended, that ſuppoſing the priſoner had not the entire and legal poſſeſſion of this *bank-note*, but a bare charge of the property only, yet it is not an offence within the act. The ſtat. of 2 *G. II. c.* 25, *ſ.* 3, enacts that "Whoever ſhall ſteal or take by robbery any Exchequer *orders*, or *tallies*, or other order entitling any other perſon to any Annuity or ſhare in any Parliamentary fund; or any Exchequer *bills*, *bank-notes*, South-Sea *bonds*, Eaſt-India *bonds*, Dividend *warrants*, &c. &c. ſhall be deemed guilty of felony:" and ſo goes on enumerating other ſpecies of property, all of them in the *plural number*; whereas the fact charged in the indictment is for ſtealing *one bank-note* only. Penal acts are to be conſtrued with great ſtrictneſs, and cannot be made to affect the life, liberty, or property of the ſubject, but according to their literal import. As to the preſent caſe, it is highly probable that the legiſlature did not intend to take away life for ſtealing only one of the ſecurities which the act deſcribes. The 1 *Ed. VI. c.* 12. *ſ.* 10, made it felony, without clergy, to ſteal "*horſes*, *geldings*, or *mares*," in the plural number; it was doubtful whether this could extend to the ſtealing of *one* horſe only,

* But now by 5 *G. III. c.* 25. *ſ.* 17, and 7 *G. III. c.* 50, it is felony, without clergy, for any ſorter or other ſervant of the Poſt-Office, to ſecrete, embezzle, or deſtroy any letter containing a *bank-note*, or other ſecurity therein mentioned. Upon thoſe ſtatutes *Richard Clay* was indicted at the aſſizes for York, as a ſervant to the Poſt-Office, for embezzling a letter containing a Bill of Exchange. It was objected, that as he had not taken the oath required by 9 *Ann. c.* 10. *ſ.* 17, and 41, he could not be conſidered as a legal ſervant to the Poſt-Office; but the Court over-ruled the objection.

and

and the legiſlature thought it proper to paſs another act to ſupply this defect.

Sir Philip Yorke, Attorney-General, anſwered theſe objections on the part of the Crown as follows:

Firſt. The offence is clearly felony, and not merely breach of truſt, for the priſoner had no property in the *bank-note*, but a bare charge only *over the letter* in which it was contained, to ſort and put it in its proper place. It is therefore like the caſe of a butler who has a charge over plate, or of a ſhepherd who has a flock of ſheep committed to his care; or of a weaver who has ſilk delivered to him by the throwſter, to work; and in all theſe caſes, it has been decided that it is felony to ſteal any of the goods ſo delivered, notwithſtanding the delivery. But, admitting, for a moment, that the priſoner was poſſeſſed of the property in *the letter*, in the ſame manner as it is ſaid a carrier is of goods which are delivered to him to carry, yet ſtill he would be guilty of felony; for by opening the letter the privity was determined. And it has accordingly been adjudged, that if a pack of goods, or a tun of wine, be delivered to a carrier, and he open them, and take out part of the goods or wine, he is guilty of felony: but I inſiſt, that a carrier has no ſuch poſſeſſory property by a delivery of goods, as will in any caſe excuſe him from the guilt of felony, if he feloniouſly convert them to his own uſe.

As to the *Second Objection*, I readily admit, that penal ſtatutes ought to receive a ſtrict conſtruction; but they muſt alſo be conſtrued according to ſound reaſon, common ſenſe, and the apparent intention of the legiſlature. That the preſent ſtatute extends to *one note*, as well as to *two*, or *more*, is, in my apprehenſion, very plain and apparent. The words are, "Whoever ſhall feloniouſly ſteal any "*notes*," &c. and then the act goes on to ſay, "Notwithſtanding *any* of thoſe particulars may be termed in "law *a choſe in action*;" which plainly ſhews that it was the intention of the Legiſlature to make the ſtealing of *a choſe in action*, which a *bank-note* is, felony. It would be a moſt unreaſonable conſtruction to ſay, that the Legiſlature intended to make it felony to ſteal *two notes* of *five pounds each*, and yet that it ſhould not be felony to ſteal *one note of ten thouſand pounds*. As to the argument that has been drawn from the 1 *Ed. VI. c.* 12. *ſ.* 10, the words in that ſtatute are, "horſes, mares, geldings," and not

any horſes, mares, or geldings, according to the manner of expreſſion uſed the 2 *G. II. c.* 25; and yet in that caſe it was only *doubted* whether it did extend to *one* horſe, &c. The 2 and 3 *Ed. VI. c.* 33, therefore only *declared*, that the ſtealing of *one horſe* ſhould exclude the felon from the benefit of clergy; which ſhewed that the Parliament only gave their judgment that it was felony without clergy by virtue of the firſt act, the ſecond being merely to remove doubts, and not to make a new law. By the 22 and 23 *C. II. c.* 7. it is made felony to burn any *ricks* or *ſtacks* of corn, &c. in the night-time; and yet it has never been doubted, becauſe this is expreſſed in the plural number, but that the burning of *one barn*, &c. was felony within the ſtatute.

The Court, after conſulting upon the ſubject, declared that it was their clear and unanimous opinion, that there was nothing in either of the objections; but that the offence, if the Jury believed the witneſſes for the king, was clearly felony without the benefit of clergy.

The priſoner was accordingly put on his defence, and he called ſeveral witneſſes, who eſtabliſhed a probable *alibi*; upon which he was acquitted.

Penalty for Neglect of Duty in Parish Officers.

Puniſhment for neglect of duty.

BY 33 *G. III. c.* 55. it is provided, that two juſtices at any ſpecial or petty ſeſſions, upon complaint upon oath of any neglect of duty, or diſobedience of any lawful warrant or order of any juſtice, by any overſeer of the poor or other pariſh officer, (ſuch perſon having been duly ſummoned to appear to anſwer ſuch charge,) may impoſe, upon conviction, any reaſonable fine not exceeding 40*s.* upon ſuch overſeer or other pariſh officer, as a puniſhment for ſuch diſobedience or neglect of duty, and if not paid, may by their warrant levy the ſame by diſtreſs and ſale of the goods of ſuch offender, rendering to him the overplus (if any) after deducting ſuch fine and the charges of ſuch diſtreſs and ſale; to be applied to the poor of the pariſh or place where ſuch offender ſhall reſide at the diſcretion of ſuch juſtices: and for want of ſuch diſtreſs, ſuch offender ſhall be committed to the houſe of correction for any time not exceeding ten days. *ſ.* 1.

If

If any perſon ſhall think himſelf aggrieved, he may appeal to the next ſeſſions, upon giving ten days notice thereof. *Id.* Appeal.

And no perſon acting under any ſuch warrant of diſtreſs, ſhall be deemed a treſpaſſer *ab initio*, by reaſon of any irregularity in any ſuch warrant or proceedings thereupon. *ſ.* 2.

Post-Office.

BY 35 *G. III. c.* 53. no letter or packet ſhall be exempted from poſtage, directed by, or ſent to any member of parliament, if the ſame ſhall exceed one ounce in weight. *ſ.* 1. Franked letters not to exceed one ounce.

And no ſuch letter or packet directed by any ſuch member, ſhall be exempted from poſtage, unleſs ſuch member whoſe name ſhall be indorſed thereon, purſuant to the laws now in force, ſhall actually be in the poſt-town into the poſt-office of which every ſuch letter or packet ſhall be put, or within the limits of the delivery of letters for ſuch poſt-town, or within twenty miles of ſuch poſt-town, on the day, or the day before, on which the ſame ſhall be put into the office. *ſ.* 2. The member to be within twenty miles of the place where the letter is put into the office.

And no ſuch member ſhall be allowed to ſend more than ten, nor receive more than fifteen letters free from poſtage in one day. *ſ.* 3. Number in one day.

And when the number, not above one ounce each, ſent or received by any ſuch member in one day, ſhall exceed the number herein allowed, and the poſtage on any of them ſhall differ; then ſuch letter or packet as ſhall be chargeable with the higheſt poſtage, ſhall be included in the number exempted, in preference to thoſe of a lower poſtage, and the remainder ſhall be chargeable as other letters. *ſ.* 4. Letters exceeding the number.

Provided, that the ſeveral perſons who, by virtue of any act of parliament, are authorized in right of their reſpective offices to ſend and receive letters free from poſtage, ſhall, during their continuance in ſuch offices, ſend and receive letters free from poſtage as before. *ſ.* 5. Perſons authorized officially to ſend and receive letters.

Provided always, that nothing herein ſhall extend to votes or proceedings in parliament, or news-papers, but the ſame ſhall paſs free from poſtage as before. *ſ.* 6. Proceedings in parliament, news-papers, &c.

Patterns and samples. But patterns and samples of goods incloſed in any cover open at the ſides, and without any letter or writing therein, and not exceeding one ounce, ſhall not be charged with a higher poſtage than a ſingle letter. *ſ.* 9.

Single letters from non-commiſſioned officers, ſeamen, or privates in the army or navy. And no ſingle letter ſent by the poſt from any non-commiſſioned officer, ſeaman, or private of the navy, army, militia, fencibles, artillery, or marines, ſhall, while employed in his majeſty's ſervice, be chargeable with more than 1d. which ſhall be paid at putting the ſame into the poſt office; provided that there be written upon the ſame, in the hand-writing of the commanding officer for the time being, his name, and the ſhip, corps, regiment, or detachment to which ſuch perſon belongs. *ſ.* 7.

Or to ſuch perſons. And no ſingle letter ſent to any ſuch perſon, upon his own private concerns only, ſhall be charged with more than 1d. poſtage, to be paid upon delivery; provided the ſame be directed to ſuch perſon, and ſpecify the ſhip, regiment, troop, corps, company or detachment to which he belongs. And the deputy poſtmaſter ſhall not deliver ſuch letter to any other, except the perſon to whom the ſame ſhall be directed, or perſon appointed to receive the ſame by the commanding officer. *ſ.* 8.

Penny poſt. And by 34 *G. III. c.* 17. There ſhall be paid 1d. additional poſtage for letters ſent by the penny poſt from any place without to any place within the cities of *London* and *Weſtminſter*, and *Southwark*, or the ſuburbs thereof. *ſ.* 1.

And the poſtage may be paid or not on putting in ſuch letter, at the option of the perſon putting the ſame in. *ſ.* 2.

Receipts.

Duty. BY 35 *G. III. c.* 35. From 5th *July*, 1795, the following additional ſtamp duties are impoſed: For every piece of vellum or parchment, or ſheet or piece of paper, upon which any receipt, diſcharge, or acquittance, given for or upon the payment of money, ſhall be written or printed, amounting to 10ol. and under 50ol., 6d; and

By whom to be paid. amounting to 50ol. or upwards, 1s. Which duties ſhall be paid, over and above all other duties, by the perſon by whom, or on whoſe behalf ſuch receipt ſhall be required; and in default of payment, may be levied againſt the perſon by whom the ſame is hereby made payable, his executors, adminiſtrators, or aſſigns. *ſ.* 1. 5.

And

And the provisions of 31 *G. III. c.* 25. which are hereby altered, shall cease, except for recovering arrears. *s.* 4. 31 *G. III. c.* 25. in part repealed

And all receipts exempted by the said act of 31 *G. III. c.* 25. shall not be liable to this duty. *s.* 2. Receipts exempted.

And all receipts in full shall be charged with a stamp duty of 2s. *s.* 6. Receipts in full.

And every *note*, *memorandum*, or *writing whatever*, given upon payment of money, which shall contain or express, or *in any manner signify* or *denote* any acknowledgment of any part of any debt, claim, account, or demand being paid, settled, received, accounted for, balanced, discharged, released, or satisfied, whether signed or not, shall be *deemed and taken to be a receipt*, and shall be liable to a stamp duty in respect of the sum actually paid. *s.* 7. What shall be deemed receipts.

And if any person shall write or sign any receipt liable to any stamp duty, without being first duly stamped; or with a stamp of a lower value than is directed by law; he shall forfeit 10l. if the sum paid or expressed therein shall not amount to 100l. and 20l. if the same amount to 100l. or upwards. *s.* 8. Penalty on writing or signing receipts unstamped.

And if any person shall give any receipt, or writing acknowledging the payment of money, in which a less sum shall be expressed than the sum actually paid, or received; or shall separate or divide the sum actually paid or received into divers sums, with intent to evade the duties; or with like intent shall write off any part of any debt, or demand; or shall be guilty of, or concerned in any contrivance with intent to defraud his majesty, he shall forfeit 50l. *s.* 9. Inserting a less sum than paid, or dividing the same.

And all vellum, parchment, or paper liable to any stamp duty, shall be stamped before the same be written or printed upon; or may be brought to the commissioners of the stamp duties, or their officers, to be stamped, within 14 days after such receipt shall be given or bear date, and may be stamped, on payment of 5l. over and above the duty; and if brought after 14 days and within one calendar month, on payment of 10l. over and above the duty. *s.* 10, 11. To be stamped before written upon.

REGISTER.

BY 34 *G. III. c.* 11. The duties upon burials, marriages, births, and christenings, imposed by 23 *G. III. c.* 67. and 25 *G. III. c.* 75. are repealed.

Selling Corn by improper Measure.

Selling corn by any other than the Winchester measure is illegal.

IN the case of *K.* v. *Arnold*, *T.* 33 *G. III.* which was a conviction against a buyer of corn by a measure different from the *Wincheſter* measure. And as the conviction was affirmed, it is here given as a precedent. *Be it remembered that on the 5th day of* January, *in the year of our Lord* 1793, *at* Huntingdon *in the ſaid county of* Huntingdon, Robert Booth, *of* Huntingdon *aforeſaid in the ſaid county, eſquire, cometh before us* Lancelot Brown *and* Henry Poynter Stanley, *eſquires, two of his majeſty's juſtices of the peace in and for the ſaid county, and giveth us to underſtand and be informed, that* Joſeph Arnold, *of* Eaton Socon *in the county of* Bedford, *yeoman, after the 25th day of* March, *in the year of our Lord* 1670, *to wit, on the 20th day of* December, *in the year of our Lord* 1792, *at the pariſh of* St. Neot's *in the ſaid county of* Huntingdon, *did unlawfully buy of and from one* William Peters, a certain quantity of wheat, containing divers, to wit, fifteen buſhels, *in a different manner than by any buſhel or meaſure agreeable to the ſtandard marked in his majeſty's exchequer, commonly called the* Wincheſter *meaſure, containing eight gallons to the buſhel, and no more or leſs, contrary to the form of the* ſtatute *in that caſe made and provided; whereby, and by force of the ſtatute in that caſe made and provided, the ſaid* Joſeph Arnold *hath incurred the ſeveral forfeitures and penalties thereunto annexed. And thereupon afterwards, on the 12th day of* January, *in the ſaid year of our Lord* 1793, *the ſaid* Joſeph Arnold *being duly ſummoned to anſwer the charge aforeſaid, perſonally appears for that purpoſe at* Huntingdon *aforeſaid in the ſaid county, before us the ſaid juſtices, and having heard the ſaid information, and being aſked if he can ſay any thing for himſelf why he ſhould not be convicted of the premiſſes above charged upon him, the ſaid* Joſeph Arnold *admits that he the ſaid* Joſeph, *on the 20th day of* December, *in the year of our Lord* 1792, *at the pariſh of* St. Neot's *aforeſaid, in the county aforeſaid, did buy of the ſaid* William Peters *the ſaid quantity of wheat in the ſaid information mentioned, at and for the price or ſum of* 3l. 19s. 6d.; *but the ſaid* Joſeph Arnold *further ſays, that he is not guilty of the ſaid offence charged upon him in and by the ſaid information; and thereupon the ſaid* Joſeph Arnold *is aſked by us the ſaid juſtices if he has or can produce any evidence to ſhew that he bought*

bought the ſaid wheat by any buſhel or meaſure agreeable to the ſtandard marked in his majeſty's exchequer, commonly called the Wincheſter *meaſure, but the ſaid* Joſeph *doth not offer any evidence touching the premiſſes, nor doth he require any time for that purpoſe: Whereupon it appearing to us the ſaid juſtices that the ſaid* Joſeph Arnold *is guilty of the premiſſes charged upon him in and by the ſaid information; therefore it is adjudged by us the ſaid juſtices, that the ſaid* Joſeph Arnold *is convicted, and is hereby accordingly convicted by us, of the offence charged upon him as aforeſaid; and we do further adjudge that the ſaid* Joſeph Arnold *hath, for his ſaid offence, forfeited the ſum of* 3l. 19s. 6d. *being the value of the ſaid wheat ſo bought by him as aforeſaid, to be applied and diſtributed according to law; and we do alſo adjudge that the ſaid* Joſeph Arnold *hath forfeited, for his ſaid offence, the further ſum of* 40s. *to be applied and diſtributed according to law. And we do further adjudge, that the ſaid* Joſeph Arnold *do forthwith pay to the ſaid* Robert Booth *the ſum of* 12s. *for the coſts in and about the premiſſes. In witneſs whereof we have to this record of conviction ſet our hands and ſeals, at* Huntingdon *aforeſaid in the ſaid county, this* 12*th day of* January, *in the year of our Lord* 1793.—*Sellon* took ſeveral objections to this conviction. 1ſt. The defendant is convicted in 40s. beſides the value of the corn; whereas he is only liable to the latter penalty inflicted by 22 and 23 *C. II. c.* 12. The firſt act, 22 *C. II. c.* 8. only affects the *ſeller*. 2dly. The quantity of corn bought is not ſufficiently aſcertained, nor is any price fixed on it in the information. 3dly. The offence is charged to be contrary to the *ſtatute;* whereas if the defendant be liable to both the penalties, it is contrary to *two ſtatutes*. 4thly. The defendant is adjudged to pay coſts; whereas none are given by the ſtatute—*Lens contra*, after referring to the 18 *G. III. c.* 19. which enables juſtices to give coſts in their diſcretion, was ſtopped by the court.—L. *Kenyon*, Ch. J. I am ſorry that the obſtinacy of the farmers, in ſome parts of the kingdom, has partly defeated the proviſions of the ſtatutes of *C. II.* becauſe, after the caſe of *K.* v. *Major* was decided, we had an opportunity of knowing, from the grand juries in different counties, that that deciſion gave great ſatisfaction. In order to decide this caſe, we have only to look at the very words of the ſtat. 22 and 23 *C. II.* which expreſsly ſubjects the buyer to both the penalties; for it is thereby enacted, that the buyer ſhall forfeit and loſe, beſides

ſides the penalty of the former act, all corn bought, &c.; that is, he is to forfeit the value of the corn, in addition to the penalty of 40s. impoſed by the former act. Nor is there any objection in ſaying that this forfeiture is an offence againſt the form of the ſtatute; for all that reſpects the buyer is prohibited by 22 and 23 *C. II.* On reading over the caſe at firſt, I thought that the objection intended to be taken, was that the evidence did not ſupport the charge; but I obſerve, that the proof of buying, according to the regulations of the ſtatute, is, by *ſ.* 3. thrown on the defendant.—*Aſhhurſt* J. concurred.—*Buller* J. The ſtatute 22 and 23 *C. II. c.* 12. inſtead of ſaying expreſsly that the buyer ſhall be liable to the penalty of 40s. and to a forfeiture of the corn ſo bought, has ſaid the ſame thing impliedly; for it ſays that he ſhall forfeit and loſe, beſides the penalty of the former act, (which is a penalty of 40s.) the corn ſo bought, &c. With regard to the objection, that the quantity is not ſufficiently aſcertained, an information before two magiſtrates need not be more particular than an information filed in this court; and in the latter caſe, an allegation that the defendant "bought a certain "quantity of wheat, containing, to wit, fifteen buſhels," would be ſufficiently certain; and here the evidence has particularized it. By the Court, Conviction affirmed. 5 *Durn. & Eaſt.* 353.

Conviction.

Conviction muſt ſtate that the witneſſes were examined in preſence of the defendant.

IN the caſe of the *K.* v. *Benwell, Mic. Ter.* 35 *G. III.* which was a conviction of the defendant in a penalty under the ſtat. 25 *G. III. c.* 47. for not delivering to the aſſeſſors a liſt of his horſes liable to duty, lord *Kenyon*, Ch. J. after allowing the exception taken by the defendant, obſerved, that there was another fatal objection, namely, it was not ſtated in the conviction that the witneſſes were examined in the preſence of the defendant. 6 *Durnf. & Eaſt.* 75.

To the Editors *of the* Counsellor's Magazine.

Gentlemen, *Oxford, May* 11.

THE trial by jury in England is of great antiquity, and, no doubt, was inſtituted on the primary eſtabliſhment of our civil government. In nations that are free

from deſpotiſm, it has been highly countenanced, and conſidered as one of the greateſt bleſſings ariſing from a civilized ſtate; and England, poſſeſſed with a conſtitution which favours and protects ſuch wiſe policy, is peculiarly boaſted of. But, whoever has attended any of the courts of juſtice, on trials by jury, in the country, either at the aſſizes or the General Quarter Seſſions, cannot but acknowledge that there is a cauſe which ſeems highly to detract from the merit of the inſtitution, and muſt regret that ſuch men, as are uſually impannelled in theſe places of judicature, ſhould have veſted in them the power of deciding in matters where the lives and properties of the ſubjects are ſo deeply concerned; for, it is very obvious, that often their ſlender capacities ſcarcely enable them to diſcriminate plaintiff from defendant. I am by no means prejudiced againſt a deſcription of men becauſe their minds are ſo contracted as not to admit of proper notions, nor do I ſay that there are no exceptions; on the contrary, I am fully perſuaded there are many huſbandmen and farmers very uſeful and intelligent men. A late act of parliament has extended the functions of juries, by empowering them to decide on the matter of law as well as on the matter of fact; which evidently ſhews the neceſſity there is of impannelling men of competent underſtandings. It appears to me, that men of education, rank, and property, are the proper perſons to fill that important ſtation. If a plan were univerſally adopted, of compoſing juries of gentlemen who have a thorough knowledge of the rights and privileges of Engliſhmen, and independence ſufficient to ſupport them, the abuſes which are repeatedly committed by illiterate juries would be aboliſhed, and the enormous expences occaſioned by ſpecial juries might be avoided; and we ſhould alſo ſee men of rank as anxious to diſcharge their duty to their countrymen in this reſpect, as they are now to add their names in commiſſion of the peace for the reſpective counties.

R.

Trial at the *Old Bailey* on the New Statute for BIGAMY.

THOMAS SHUTTLEWOOD, alias *Shuttleworth*, was indicted for having feloniouſly married and taken to wife, on the 24th of January, 1796, Ann Ludgate, ſpinſter,

ſter, well knowing at the ſame time that his former wife, Catherine Shuttlewood, alias Howe, was alive, contrary to the form of the ſtatute, &c.

The circumſtances of this caſe were briefly theſe:

It appeared by the evidence of Thomas Burr, Pariſh Clerk of Mary-le-bone, and of Margaret Robinſon, ſiſter to the priſoner's firſt wife, that he was married to his ſaid firſt wife, Catherine Howe, on the 14th of July, 1788, in preſence of theſe witneſſes; the latter of which proved that her ſiſter was ſtill alive, and alſo the identity of the priſoner.

By the teſtimony of the Rev. Griffith Griffiths, curate of St. Paul's, Shadwell, and of Ann Ludgate, otherwiſe Shuttleworth, it appeared that he was married to the latter witneſs on the 24th of January, 1796, in conſequence of the publication of banns, and under the deſcription of Thomas Shuttleworth, widower.

This laſt marriage was alſo proved by a young woman who was preſent at the ceremony.

The priſoner being called on for his defence, produced a ſhort written addreſs to the Court, which was read by the Clerk. It appeared to be a proteſtation of his innocence, as he imagined his firſt wife to be dead at the time.

By the ſtatement of the Counſel for the proſecution, it appeared that the priſoner had reputable parents, and was educated for a learned profeſſion. However, the Counſel ſaid, for reaſons not neceſſary to be then mentioned, he never followed any, but took up the occupation of a gentleman's ſervant.

After a very ſhort conference, the Jury found the priſoner—*Guilty*.

Peat's Caſe.

Returning the Booty is no Extenuation of Robbery.

The continuance of the property in the poſſeſſion of a robber, is not required by the law to complete the crime.

At the Old Bailey December Seſſion, 1781, the priſoner John Peat was indicted before Mr. Baron *Hotham*, preſent Mr. Juſtice *Willes*, for a highway robbery on *Richard Downe*, Eſq. by putting him in corporal fear and danger of his life, and taking from his perſon a ſilk purſe, value threepence, and twenty-three ſhillingss in monies numbered.

The

The priſoner on horſeback ſtopped *Mr. Downe's* carriage on Finchley Common. *Mr. Downe* gave him his purſe. The priſoner took it, but immediately returned it again to *Mr. Downe*, ſaying, "If you value your purſe "you will pleaſe to take it back, and give me the con-"tents of it." *Mr. Downe* received it back, but while he was taking out the money, and before he had re-delivered it to the priſoner, his ſervant jumped from behind the carriage and ſecured the priſoner.

A doubt aroſe, Whether, as robbing is only an aggravated ſpecies of *larceny*, there was a ſufficient *aſportation* in this caſe to conſtitute the offence? But the Court held that, though the proſecutor did not eventually loſe either his purſe or his money, yet as the priſoner had in fact demanded his money, and under the impulſe of that threat and demand the property had been once taken from the proſecutor by the priſoner, it was in ſtrictneſs of law a ſufficient *taking* to complete the offence, though the priſoner's poſſeſſion had continued for an inſtant only.

The following caſe is ſtrongly in point. *A* requires *B* to deliver his purſe, and he delivers it accordingly; but *A* finding only two ſhillings in it, gives it him again, yet this is a taking by robbery. *Cromp.* 34. *Dalt. c.* 153. *p.* 492. 1 *Hale*, 533. For he who has once actually completed the offence, by taking the goods of another *in ſuch a manner* into his poſſeſſion, cannot afterwards purge it by any re-delivery. 1 *Haw. P. C.* 247. The outrage offered to the rights of ſociety does not vary in its nature, becauſe it is ineffectual in its conſequences; and the continuance of the property in the poſſeſſion of the robber is not required by law.

James Lapier's Case.

What *taking away* is required to conſtitute *Larceny.*

AT the Old Bailey in May Seſſion, 1784, James Lapier was indicted before Mr. Baron *Perryn*, for aſſaulting *Albina Hobart*, and taking from her perſon violently and againſt her will, one gold ear-ring ſet with diamonds, value £150, the property of her huſband, *George Hobart*, Eſq.

The circumſtances of this caſe, as they appeared in evidence, were as follow: *Mrs. Hobart* was retiring from

the Opera Houſe, through the king's door, towards her carriage, which had drawn up cloſe to the pavement of the ſtreet to receive her. Whilſt ſhe was preparing to ſtep in, ſhe felt a perſon, who was proved to be the priſoner, take hold of her ear, and pull her ear-ring as if endeavouring to pull it off: her ear by this violence was torn entirely through; the ear-ring ſeparated from the ear, and *Mrs. Hobart* conceived it had been *taken away:* but on her arrival at home, it was found among the curls of her hair. There was no proof that the ear-ring was ever ſeen in the priſoner's hand; but his hand was ſeen elevated to her ear, and at that inſtant *Mrs. Hobart* exclaimed, "I have loſt my ear-ring."

Mr. Baron *Perryn* to the Jury. Robbery is only an aggravated ſpecies of larceny; and to conſtitute a larceny, it is eſſential that there ſhould be not only a *taking*, but a *carrying away*. The taking, in the preſent caſe, is very clearly proved; for the ear-ring was completely ſeparated from the ear: but it ſeems queſtionable whether there has been a ſufficient *taking away*. A number of caſes have been decided upon this ſubject; two of them have come before Lord *Mansfield* ſince I have been upon the bench. One of them was a caſe reſerved by Mr. Juſtice *Nares*: a man got into a waggon where there was a bale of goods, which lay in a horizontal poſture; he raiſed it perpendicularly on its end, and while he was taking the contents of it out, he was detected by the waggoner. The Judges were of opinion that, as the property had not been removed from the place where it at firſt laid, there was not a ſufficient *carrying away*: The other caſe was reſerved by myſelf: the Uxbridge waggon was paſſing along Oxford-ſtreet; and at a grocer's door, a parcel of ſugar or other grocery was taken up and put into the waggon. The priſoner got into the waggon, and had removed this parcel from the head of the waggon, where it had been originally placed, to the tail of it; but he was apprehended before he had got it out of the waggon. The Judges held, that this was a ſufficient *taking* and *carrying away* to conſtitute the offence. There is a very leading caſe upon this ſubject in print (27 *Aſs. pl.* 1 *Hale*, 508.) A man lodged at an inn, and in the morning before it was light took the ſheets from off the bed on which they lay, *with an intent to ſteal them*, and carried them into the hall, where he left them, and went to the ſtable to get his horſe, where the

the hoſtler ſeizes him; and it was adjudged to be larceny.

The Jury found the priſoner guilty; but the judgment was reſpited, and the caſe ſubmitted to the conſideration of the *Twelve Judges*.

In July Seſſion following the priſoner was put to the bar, and informed by *Mr. Reynolds*, Clerk of the Arraigns, that his caſe had been conſidered by the Judges; and they were of opinion, that he was guilty of the felony charged againſt him in the indictment.

The above caſe will probably receive illuſtration by the two following. At the Lent Aſſizes for Cambridge, 16 *C. II. Clement Simpſon* was indicted on 39 *Eliz. c.* 15. for ſtealing in the dwelling houſe. A ſpecial verdict was found, that he had taken plate out of a trunk, and laid it on the floor; but was apprehended before he had carried it away: and *all the Judges* were of opinion, that taking goods and removing them from one place to another in the ſame houſe with an intent to ſteal them, is felony; for, by the *taking* he hath the poſſeſſion. *Forſter*, 109.

But in the caſe of *Edward Farrel*, who was indicted for robbery at the Old Bailey, July Seſſion, 1787, it was found that the priſoner ſtopped the proſecutor as he was carrying a feather-bed on his ſhoulders, and told him to lay it down or he would ſhoot him. The proſecutor laid the bed on the ground; but before the priſoner could take it up ſo as to remove it from the ſpot where it lay, he was apprehended. The *Judges* were of opinion that the offence was not completed, and the priſoner was diſcharged.

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36 G. III. c. 124. *An Act for granting to His Majeſty certain Duties on Dogs.* [19th May 1796.]

BY the 36 *G. III. c.* 124, it is enacted, That, from and after the Fifth of *July*, 1796, every Perſon who ſhall keep any Greyhound, Hound, Pointer, Setting Dog, Spaniel, Lurcher, or Tarrier, or who ſhall keep Two or more Dogs of whatever Deſcription or Denomination the ſame may be, ſhall be aſſeſſed annually with the Sum of Five Shillings for each Greyhound, Hound, Pointer, Setting Dog, Spaniel, Lurcher, or Tarrier, and alſo for each Dog, where Two or more Dogs ſhall be ſo kept; From *July* 5, 5s. to be paid annually for every Greyhound, &c. and for every Dog whatever where Two or more are kept; and 3s. for each Dog not be-

ing a Greyhound, &c. where only One is kept by a Houſekeeper aſſeſſed to the Duties on Houſes.

kept; and every Perſon who ſhall inhabit any Dwelling Houſe, aſſeſſed to any of the Duties on inhabited Houſes, or on Windows or Lights, and ſhall keep One Dog and no more, ſuch Dog not being a Greyhound, Hound, Pointer, Setting Dog, Spaniel, Lurcher, or Tarrier, ſhall be charged with the Sum of Three Shillings for ſuch Dog. *ſ.* 1.

Duty not to extend to Dogs not 6 Months old, the proof of which to lie on the Owner.

But nothing in this Act ſhall charge with the ſaid Duty any Dog or Whelp, which, at the Time of returning the Liſt of Dogs kept by any Perſon as by this Act is required, ſhall not actually be of the Age of Six Calendar Months: Provided alſo, that if any Diſpute ſhall ariſe touching the Age of ſuch Dog or Whelp, the Commiſſioners authorized to execute this Act ſhall finally determine the ſame, on Appeal to be made thereupon; and that upon every Appeal to the ſaid Commiſſioners, for any Matter or Thing under this Act, if the Matter in Diſpute ſhall be in reſpect of the Age of any Dog or Whelp aſſeſſed to the ſaid Duty, the Fact that the ſame is under the age of Six Calendar Months, ſhall lie on the Owner of ſuch Dog or Whelp, who ſhall claim ſuch Exemption, on his Oath or Affirmation, or on the Oath or Affirmation of One or more credible Witneſs or Witneſſes, to be tendered by ſuch Owner or Owner. *ſ.* 2.

And the Duties are to be collected in the ſame Manner, under the like Penalties, and ſubject to the like Powers as the Duties on Horſes. *ſ.* 3.

Mode of making Aſſeſſments of the Duty, and of Liſts of Dogs.

It is further enacted, That the Firſt Aſſeſſment under this Act, of the ſaid Duties hereby impoſed, ſhall be made for Three Quarters of a Year, from the Fifth of *July*, 1796; and that in the Firſt Liſt to be made out in purſuance of this Act, the ſame ſhall contain the greateſt Number of Dogs kept in the Year preceding, and ending on the Fifth of *July*, 1796, and afterwards the ſaid Aſſeſſments ſhall be made for One Year from the Fifth of *April* in every Year; and that, in the Liſts to be made out for any ſubſequent Year, the ſame ſhall contain the greateſt Number of Dogs kept in the Year preceding, and ending on the Fifth of *April* yearly. *ſ.* 4.

Perſons liable to the Duties are to make out and deliver to the Aſſeſſors, Liſts and Declarations of the Number of Dogs kept by them, in like Manner as they are under former Acts to deliver Liſts of Horſes. *ſ.* 5, 6.

Provided

Provided always, That if any Perſon ſhall be deſirous of compounding for the Number of Hounds by him kept in any Year, and ſhall give Notice thereof to the Collector for any Pariſh or Place where ſuch Perſon ſhall be liable to be aſſeſſed, of his Intention ſo to do, and ſhall pay, or cauſe to be paid, the full Sum of Fifteen Pounds, within Thirty Days after the Fifth of *July*, 1796, and in any ſubſequent Year, ſhall pay, or cauſe to be paid, the Sum of Twenty Pounds, within Thirty Days after the Fifth of *April* in ſuch Year, ſuch Perſon ſhall not be liable to be aſſeſſed in reſpect of any Hounds by him kept in the Year preceding ſuch Notice and Payment; provided that if ſuch Perſon ſhall be liable to be aſſeſſed in reſpect of the ſaid Duty in Two or more Pariſhes or Places, then he ſhall cauſe to be given the like Notice to the proper Officers in every Pariſh or Place where he or ſhe ſhall be liable to be aſſeſſed; and ſhall declare in which Pariſh or Place ſuch Compoſition is intended to be made; and every Collector to whom ſuch Compoſition ſhall be paid, ſhall give a Receipt for the ſame, as and for a Compoſition for the Duty by this Act impoſed. *ſ.* 7. Perſons keeping Hounds may compound for the Duty

Duties to be carried to the Conſolidated Fund. *ſ.* 8.

If any Action or Suit ſhall be commenced againſt any Perſon for any Thing done in purſuance of this Act, it ſhall be within Six Calendar Months after the Fact committed. *ſ.* 10.

COURT OF KING's BENCH,

June 7.

GAVE judgment in the long-depending cauſe between Thomas Worſley, Eſq. Secretary to the Phœnix Fire-Office, Plaintiff in Error, and Wood and others, Aſſignees of Lockyer and Bream, Defendants in Error. This Cauſe was brought by Writ of Error from the Court of Common Pleas, when, in the year 1794, a verdict had been obtained againſt the Office for 3000l. As that verdict, by neceſſary conſequence, imputed fraud and concealment to the Bankrupts, who ſhortly before the fire had obtained inſurance for 7000l. (the ſum for which the action was brought,) and had ſet up proofs that near

near 8000l. worth of effects were deſtroyed; the Directors of the Fire-Office conſidered the original judgment of the Miniſter and Churchwardens; who, after a moſt deliberate inquiry, had refuſed to certify, as fortified by by this verdict, and therefore determined to reſiſt the judgment in every legal way. The cauſe was argued by Mr. Law in behalf of the Office, and by Mr. Gibbs for the Aſſignees of the Bankrupts; when the Lord Chief Juſtice, and each of the Judges, delivered their opinions, *ſeriatim*; and all concurred in the determination, that the judgment ought to be reverſed. The Counſel for the Aſſignees having endeavoured to caſt ſome aſperſions on the conduct of the Directors, produced an animated reply from Mr. Law, which was interrupted by the Lord Chief Juſtice, who deſired him to ſpare himſelf the trouble, declaring that no imputation upon earth could faſten upon men, whoſe reſiſtance in this cauſe was a public duty. The Noble Lord, and the reſt of the learned Judges, ſeverally mentioned the conduct of the Miniſter and Churchwardens, as well as that of the Directors, in terms, which make a full compenſation for all the unmerited ſlanders which a firm adherence to their reſpective duties had drawn upon them, from the diſappointed purſuers of an unjuſt claim.

Thurſday, June 9.

Mr. MIDDLETON, who was convicted, in the ſittings after laſt Hilary Term, of ſeducing artificers out of this kingdom, was brought up to receive judgment. Previous to the Court paſſing ſentence, Mr. Erſkine endeavoured to arreſt the judgment, upon the ground of a defect in the indictment; it charged the defendant with ſeducing artificers out of this kingdom to America, out of his Majeſty's dominions; Mr. Erſkine contended, that as his Majeſty had dominions in America, the indictment ſhould have ſpecified the part of America to which they were to go. Mr. Law was proceeding, on the part of the proſecution, to reply to Mr. Erſkine, when he was ſtopped by the Court, who were of opinion that there was no ground to arreſt the judgment. Mr. Juſtice Aſhhurſt then proceeded to paſs ſentence upon Mr. Middleton, which was, that he ſhould be impriſoned one year, and pay a fine of 500l.

Monday,

COMMON PLEAS,

Monday, June 13.

The KING *on the Profecution of the* COUNTESS OF STRATHMORE *againſt* ANDREW ROBINSON BOWES, ESQ.

Mr. ERSKINE, on behalf of the Defendant, moved that ſatisfaction might be entered on the Record of the Conviction, purſuant to his Majeſty's gracious pardon, as to the fine of 300l.

The Attorney General, on behalf of the Crown, ſaid, he was authoriſed to conſent to Mr. Erſkine's Motion.

Mr. Erſkine then ſtated, that his Majeſty, in his humanity, has alſo been graciouſly pleaſed to grant his pardon to Mr. Bowes, as to that part of the ſentence which required Mr. Bowes to find ſureties in ten thouſand pounds for fourteen years. Mr. Erſkine obſerved, that Mr. Bowes had been near ten years in priſon; the hardſhips of his caſe were many, but he would not then detail them; ſuffice it to ſay, that his Majeſty, who was the fountain of mercy, and the brighteſt example of domeſtic virtue, had ſeen reaſon to relieve Mr. Bowes from the weight of his ſentence.—One thing he could not in juſtice to Mr. Bowes omit, which was, that he could confidently appeal to the Marſhal, whom he was glad to ſee in Court, as to the uniform good conduct of Mr. Bowes during the long period of his impriſonment.

Lord Kenyon ſaid, he underſtood Mr. Bowes's conduct had been highly exemplary.

Mr. Bowes then entered into a perſonal recognizance, and, after reſpectfully bowing to the Court, withdrew.

COURT OF COMMON PLEAS,

Saturday, June 25.

DAVIS *verſus* THE SHERIFFS OF LONDON.

THIS was an action to recover from the Defendants a compenſation in damages for falſe impriſonment.

The circumſtances of this caſe were theſe: A Mr. Thompſon had ſued out a writ againſt a perſon of the ſame name as the Plaintiff; this writ was given to a Sheriff's Officer to execute, who accordingly went to a coſ-

fee-

fee-houſe to make the arreſt. In this coffee-houſe was the Plaintiff. The Officer enquired for Mr. Davis, of Cheſter, and ſuppoſing that the Plaintiff was the perſon, arreſted him, ſaying, "Sir, I have got a writ againſt you." The Plaintiff replied, "I believe you are miſtaken." The Plaintiff immediately ſent for an Attorney, who lived in the neighbourhood; but before he came, the Officer and his man, having reaſon to believe the Plaintiff was the wrong perſon, went away.

Mr. Serjeant Adair, as Counſel for the Defendants, contended that this action could not be maintained, inaſmuch as there was no evidence of any falſe impriſonment.

The learned Judge obſerved, that the law had given to Sheriff's Officers large power, but had attached to them great reſponſibilty. The queſtion in this caſe was, "whether the Plaintiff had been detained by the Officer for any time; for if he had been detained, even for a moment, the law made the Sheriffs liable to an action," but the Jury might give ſuch damages as they thought fit.

They Jury withdrew for about half an hour, and returned with a verdict for the Plaintiff, damages *one farthing*.

OLD BAILEY,

Saturday, June 25.

MURDER.

Richard Ludman, *Eleanor Hughes*, *Ann Rhodes*, and *Mary Baker*, were indicted for the wilful murder of George Hebner, on the 22d of May, by ſtrangling him with a cord, &c.

It appeared in the courſe of the evidence adduced in this caſe, that the priſoner, Eleanor Hughes, kept a houſe of ill fame, in Dean-ſtreet, Eaſt-Smithfield; the other priſoners were inmates of her houſe. On Tueſday, the 17th of May, the deceaſed, who was a taylor, left his reſidence in Maddox-ſtreet, to which he never returned, and went to the houſe of Mrs. Hughes, where he reſided the remainder of that week; it appeared that he was deſtitute of money, as in the courſe of the week a conſiderable part of his clothes were depoſited with a pawnbroker. Mrs. Hughes, it appeared, pawned them for

for him; his coat was pawned for 10s. 6d. on Saturday the 21ſt. On the morning of Sunday the 22d. it appeared that the death of the deceaſed firſt tranſpired, as he was found hanging at the feet of the bed; the circumſtance was conſequently ſoon known to all the neighbourhood, and ſeveral perſons came into the houſe to make enquiries on the occaſion.

The perſons by whoſe means the guilt of the priſoners was in a great degree detected, were a Mrs. Darley and Mrs. Johnſon, her lodgers, who occupied the adjoining houſe to that of the priſoner; the partition was very ſlight, and had cracks in ſeveral parts of it, by which a view could be had of ſeveral rooms in the priſoner's houſe; through theſe, by one or the other of theſe women, was perceived a quarrel between the deceaſed and Mrs. Hughes on the Saturday evening, and the latter was heard to ſay, "ſtrike me, you dog, ſtrike me." Hughes was in liquor at the time, to which the deceaſed returned no anſwer. On the following morning Mrs. Hughes was ſeen to come down and heard to ſay to Baker, "Oh Lord, I can go up no more;" ſhe ſaid ſomething elſe, which was not diſtinctly heard; to which Baker replied "Oh Lord, I'll call Dick!" (meaning the priſoner Ludman.) Ann Rhodes was ſeen the ſame morning in the room where the deceaſed was, and to look very ſorrowful and dejected. The four priſoners were ſeen ſoon after together in one of the lower rooms, and Hughes ſaid to them, "at ten o'clock we'll lay him." Hughes then went out, and Baker followed her. As they were going, Ludman ſaid to the former, "Mother Hughes, don't ſhut the door, and they'll have no ſuſpicion." Theſe witneſſes had ſeen the deceaſed go in and out of Hughes's houſe in the courſe of the week; they alſo ſaw the corpſe hanging at the feet of the bed on Sunday morning.

By the teſtimony of a watchman, and other perſons, who went into the houſe on Sunday morning, ſeveral other circumſtances of guilt appeared. One of the witneſſes, on going in, met Ludman; he aſked him who he was? the priſoner anſwered, he ſlept there laſt night, and wanted to go out; but the witneſs ſaid he ſhould not ſtir until the officer arrived; on which Ludman went into one of the rooms, and ſaid, "Damn my eyes, I might as well ſit down, for you can but hang me." To another witneſs who was going in, Ludman and Rhodes ſaid,

"What buſineſs have you here? a man hung himſelf in this houſe laſt night." Several of theſe witneſſes ſaw the corpſe of the deceaſed; they deſcribed it to hang ten or twelve inches down the bed-poſt, the hands were tied behind, back to back with a cord, ſtrained ſo tight, that the fleſh of the hands and wriſts were ſwelled over the cord; it was faſtened with what is called a *ſailor's knot*; round the head of the deceaſed was tied a half neck-handkerchief, very tight, faſtened with ſuch a knot as the cord; the broad part of this handkerchief was drawn over the face of the deceaſed, and was very bloody, which latter circumſtance was not accounted for. The priſoners, on being aſked, all denied having any thing to do in the commiſſion of the fact; and Eleanor Hughes ſaid ſhe believed the man hung himſelf.

The teſtimony of Nowlan, the Police Officer, was alſo very material; he brought the priſoners in a coach to Newgate, when they were fully committed for trial. On their way a converſation to the following effect, took place between the priſoners:—Ludman ſaid to Mrs. Hughes, "What a wicked woman you were to bring us all into this ſcrape, and not to tell the truth, and ſave us all." Hughes replied, "She told them all ſhe knew about it" Ludman anſwered, "you did not, for you know you hit the man twice on the head with a poker." Hughes then ſaid, "You may ſay what you will, but I know nothing of it; if I am guilty, you are all guilty as much." Baker ſaid, "the man could never tie his hands, and hang himſelf."

Mr. King, a Surgeon, who viewed the body of the deceaſed, was certain that he died of the ſtrangulation; he obſerved no cuts in his head, though he might have been ſtruck on it, without his being able to perceive it when he ſaw the corpſe.

The foregoing is the ſubſtance of the evidence for the proſecution. The priſoners being called on ſeverally for their defence, narrated a detail of circumſtances reſpecting the reſidence of the deceaſed in Hughes's houſe, all terminating in aſſertions of their own innocence, and that the deceaſed muſt have hanged himſelf.

Two or three perſons appeared to the character of Eleanor Hughes. A Coal Merchant, who lives in King-Street, Holborn, knew her in her huſband's time, when ſhe conducted herſelf very properly; but he knew very little

little of her ſince the death of her huſband, which was four or five years ſince. Two women ſpoke to her character; but one of theſe ſaid ſhe was a very paſſionate woman when in liquor.

Two reſpectable witneſſes appeared to the character of Mary Baker. They ſaid ſhe was an unfortunate girl, and was recently in very great diſtreſs, but they never knew any thing diſhoneſt, or ill-natured of her.

One or two witneſſes to the ſame effect appeared for Ludman; they ſaid he had been at ſea.

The Lord Chief Baron ſummed up the evidence to the foregoing effect. He obſerved, that the preſent was a caſe where no direct evidence to the fact itſelf was adduced; but it exhibited ſeveral very ſtrongly marked circumſtances, implicating the guilt at leaſt of two of the priſoners. It was proved to a demonſtration, that the deceaſed was not the author of his own death; and it appeared by the evidence that no perſon laid in the houſe on the Saturday night but the priſoners. He then pointed out the circumſtances which affected the priſoners; and the converſations which took place, he ſaid, ſhould be ſeriouſly conſidered. He obſerved, that little of theſe affected the priſoners Baker and Rhodes. They were to judge from a review of the whole evidence, and to give the priſoners the benefit of any reaſonable doubts they might entertain.

The Jury retired for about an hour, after which they brought in their verdict—Richard Ludman and Eleanor Hughes—*Guilty.*—Ann Rhodes and Mary Baker—*Not Guilty.*

The Recorder then pronounced the awful ſentence of the law annexed to the crime of Murder, on the two convicted priſoners, to be executed on Monday the 27th.

Eleanor Hughes, on being aſked what ſhe had to alledge why the ſentence of the law ſhould not be executed on her, pleaded her being in a ſtate of pregnancy.

In conſequence of this a Jury of Matrons were collected, and ſworn to examine the ſituation of the priſoner, and to report whether ſhe was pregnant.

They withdrew with the priſoner; and after an interval of about half an hour, declared her to be "with child—but not *quick* with child."

Cases of Distress.

IN the caſe of *Firth v. Purvis* and others, *M.* 34. *G. III.* it was determined, That it is no anſwer to an action on the ſtatute 2 *W. & M. c.* 5. for a pound breach, that the rent and demand were tendered *after* the diſtreſs and impounding. 5 *Durnf. & Eaſt.* 432.

And in the caſe of *Storey* v. *Robinſon*, *H.* 35 *G. III.* it was determined, That a horſe cannot be diſtrained damage feaſant, if there be a rider upon him. 6 *Durnf. & Eaſt*, 138.

In the caſe of *Meſſenger* v. *Armſtrong*, *M.* 26. *G. III.* which was upon an action for double rent—L. *Mansfield* Ch. J. ſaid, That where a term is to end on a preciſe day, there is no occaſion for a notice to quit, becauſe both parties are appriſed that unleſs they come to a freſh agreement there is an end of the leaſe. 1 *Durnf. & Eaſt*, 53.

Where diſtreſs cannot be found in the juriſdiction of the juſtices granting warrants, it may be levied in any other place.

And by 33 *G. III. c.* 55. after reciting that warrants of diſtreſs are ſometimes ineffectual by reaſon of the goods of the offender being out of the juriſdiction of the juſtice granting the ſame, It is enacted, that in all caſes where any penalty, forfeiture, fine, or other money is directed by warrant of any juſtice to be levied by diſtreſs and ſale of the goods of any perſon; if ſufficient diſtreſs cannot be found within the limits of the juriſdiction of ſuch juſtice; on oath thereof made by one witneſs, before one juſtice of any other county or place, (which oath ſhall be by him certified by indorſement on ſuch warrant,) ſuch penalty, forfeiture, fine, or other money, or ſo much thereof as may not have been before levied or paid, may, by virtue of ſuch warrant and indorſement, be levied by the perſon to whom ſuch warrant was originally directed, by diſtreſs and ſale of the goods of ſuch perſon in ſuch other county or place; to be applied in like manner as if ſufficient diſtreſs had been found within the juriſdiction of the juſtice who originally granted ſuch warrant; and if no ſuch diſtreſs can be found, ſuch offender may be proceeded againſt according to law. *ſ.* 3.

Provided that no juſtice, who ſhall indorſe any ſuch warrant as aforeſaid, ſhall be anſwerable for any irregularity which may have been committed in or about the granting thereof. *Id.*

Servants.

UPON the appeal of *J. Compton*, Eſq. againſt a ſurcharge on a gardener, it appeared, that this appellant occupies his own manſion-houſe, garden, ſtables, and other out houſes, with a farm adjoining, all ſituate at *Biſtern* near *Southampton:* that he hired one *Bead* as a day labourer at 7*s. per* week, to look after and work in his gardens, and there are alſo two other men who occaſionally work in the ſaid gardens as day labourers; *Bead* ſometimes does work in the huſbandry buſineſs, but is generally employed in the ſaid gardens: he lives with his family in a cottage he rents of one *Wilkins*, and does not eat or drink in the appellant's houſe. On appeal, it appeared to the commiſſioners, that as the appellant occupies a pleaſure and kitchen garden, hot houſes, &c. he muſt be ſuppoſed to employ, and have occaſion for a gardener; and the judges were of the ſame opinion. 22d *May* 1794. Gardener hired by the day.

Usury.

Smith *v.* Prager. *T.* 36 *G. III.*

THIS action was brought by the Plaintiff in the character of aſſignee of Mr. Plomer, a bankrupt, to recover damages from Prager for having taken exorbitant and uſurious premiums, on ſeveral ſums of money which he had lent to Plomer.

Plomer, who was called on behalf of the Plaintiff, ſtated, that his tranſactions with Mr. Prager had commenced in 1793, and ended in December 1795. The ſums which he had at different times borrowed of Prager during that period, might amount to 100,000l. The premiums, to the beſt of his recollection were about 6500l. It was impoſſible for his memory to ſeparate each ſpecific loan from this groſs amount. The account of his tranſactions with Prager were kept by that gentleman, and he underſtood that his creditors had been told it was loſt. The three laſt ſums, however, he could diſtinctly recollect. One of them he had received on the 17th of September

tember 1795; its amount was 900l. and it was repaid on the 3d of October. The premium on this ſum was 11l.

On the 8th of October he borrowed 3200l. payable on the 20th of the ſame month; for which the premium was 58l. On the 13th he received 2000l. payable on the 26th of October; and the premium for this ſum was 42l. He had alſo given Prager, by way of ſecurity, a power of attorney to draw on his bankers, Willis and Company, for ſuch ſums as he might be indebted to him, and as it might be apprehended, that in the event of his dying while due to the defendant, it would be difficult to recover payment under the circumſtances of theſe tranſactions, he had given the additional ſecurity of a will in his favour.—The witneſs had run away with one of Goldſmid's daughters, and in his abſence a docket of bankruptcy was ſtruck againſt him.

The witneſs's evidence received very ſtrong confirmation from his banker and clerks, who depoſed to have paid Prager drafts drawn by Plomer for the principal ſums, which were accompanied alſo by drafts for the reſpective ſums ſtated by Plomer to have been premiums.

The evidence for the Defendant went ſolely to Plomer's character: and repreſented him as a perſon of no veracity. On their croſs examination, however, it appeared, that, previous to the bankruptcy, he had borne a very reſpectable character.

After a very excellent ſumming up from the Lord Chief Juſtice, the Jury found a verdict for the Plaintiff. Damages 8700l.

The Jury found that the Defendant had taken uſurious intereſt for the two ſums of 2000l. and 900l. and by adding theſe two ſums together, and multiplying them by three, the product will amount to the penalties found by the Jury.

A Soldier being the Father of a Baſtard.

Being the father of a baſtard child

IN the caſe of *K.* v. *Bowen*, *H.* 33 *G. III.* The defendant, *W. Bowen*, was committed to the houſe of correction at *Ayleſbury*, on a charge made by *A. Ives* of *Eaton* pariſh for begetting her with child, which child was likely to become a baſtard, for refuſing to give ſecurity to indemnify the pariſh of *Eaton*, and for refuſing to enter into a recognizance

a recognizance to appear at the next ſeſſions, and to abide ſuch order as ſhould be made in purſuance of 18 *Eliz. c.* 3. At the ſeſſions he was ordered to be continued in cuſtody till he gave ſuch ſecurity. The ſaid *W. Bowen* was, at the time of his being apprehended, and ſtill is, a private ſoldier, actually ſerving in the 29th regiment of foot, and has no property except his pay and ſubſiſtence as ſuch ſoldier; and the ſaid *A. Ives* is not yet brought to bed.—*Wilſon*, in ſupport of the order of ſeſſions, after mentioning the caſe of *K.* v. *Archer* as deciſive of the preſent, was ſtopped by the court.—*Lowndes*, *contra*, in order to diſtinguiſh this caſe from *K.* v. *Archer*, obſerved (*inter alia*) that in *K.* v. *Archer* the child was born and had become chargeable to the pariſh, and an order made by two juſtices which had been diſobeyed; but here the woman was not delivered.—L. *Kenyon* Ch. J. in the firſt place declared, that no *certiorari* ought to have been allowed, but the mode of relief ought to have been by *habeas corpus*. But to avoid further expence to the parties, he ſaid, I will conſider the queſtion as it appears before us. The caſe of *K.* v. *Archer* was decided on grounds perfectly ſatisfactory to me. There can be no doubt but that incontinence is a crime, and it has always been conſidered as ſuch in the eccleſiaſtical courts. Now the clauſe in the mutiny acts which exempts ſoldiers from arreſt in caſes where the demand is under 20l. is clearly confined to civil actions; and the inſtances put at the bar, in which it was ſuppoſed that the court would interfere on behalf of the ſoldier, are caſes of civil actions; a penal action is ſo far conſidered as a civil action, that a quaker may be examined on his affirmation as a witneſs on the trial of it; it is a civil action, although ariſing on a penal ſtatute. But this proceeding cannot be conſidered in the nature of a civil action, it is altogether a criminal proceſs; and therefore I am clearly of opinion that the order of the juſtices is right. Order of ſeſſions confirmed. 5 *Durnf. & Eaſt*, 156.

Altering a Bill of Exchange.

T. 36 *G. III.* Bowman *againſt* Nichol.

THIS was a cauſe lately tried at Guildhall, before Lord Kenyon, on a Bill of Exchange. The date of the Bill had

had been altered after it was drawn without adding a new ſtamp, and, agreeable to the opinion of Lord Kenyon, a nonſuit was entered.

A rule had been obtained by Mr. Mingay, to ſhew cauſe why the nonſuit ſhould not be ſet aſide and a new trial granted.

Mr. Erſkine now ſhewed cauſe, and the Court were unanimous that the nonſuit was right.

Lord Kenyon ſaid they might as well have totally eraſed the Bill of Exchange, and have inſerted another deed on the ſame ſtamp, as to alter the date, which in fact made it another Bill.

Acts concerning Salt and Salt-Fish.

Herrings, &c. ſprinkled with ſalt on landing, may be carried coaſtwiſe in bulk free of duty.

BY 35 *G. III. c.* 56, the curers of herrings may, during the ſeaſon, carry coaſtwiſe in bulk, free of duty, herrings, or cod, ling, hake, and ſalmon, actually taken in the herring fiſhery, that ſhall have been landed and depoſited in any warehouſe, under the care of the ſalt officers, and there ſprinkled with ſalt taken out of any warehouſe under the revenue locks, for the uſes of the *Britiſh* fiſhery; which ſalt ſhall have been depoſited, during the time of the fiſhery, in any ſtore or warehouſe, for the purpoſe only of ſprinkling ſuch fiſh, to preſerve them until the ſame ſhall be afterwards carried to that part where ſuch fiſh are to be entirely cured, or otherwiſe diſpoſed of. *ſ.* 4.

Cocquet to expreſs that no bounty has been paid on ſuch fiſh.

But it ſhall be expreſſed in the cocquet to accompany the ſaid fiſh, that no bounty has been paid or claimed upon the ſame; and the ſaid fiſh ſhall be ſubject to all the regulations now in force under this, or any other act, for ſecurity of the duties on ſalt. *ſ.* 4.

Salt may be imported, or *Britiſh* ſalt uſed, for curing mackarel, &c. for home conſumption, as for herrings or pilchards.

By 35 *G. III. c.* 54, it ſhall be lawful for any fiſh-curer in *Great Britain* to import any quantity of foreign ſalt, or to take any quantity of *Britiſh* ſalt from any ſalt works or pits, and to carry coaſtwiſe the ſalt ſo imported or taken for the purpoſe of *curing mackarel, or any cod, ling, hake, or ſalmon taken in the mackarel fiſhery*, for home conſumption, without paying any duty except the euſtoms, in as full a manner as any curer of fiſh engaged in the herring or pilchard fiſhery may, and under the ſame regulations. *ſ.* 1.

And

And for every barrel of white mackarel, twice packed, and completely cured, and containing 32 gallons, which ſhall be exported from *Great Britain* into any parts beyond the ſeas (except the *Mediterranean*, in which caſe no bounty ſhall be payable), a bounty of 2*s*. 8*d*. ſhall be paid; and for every barrel of mackarel which ſhall be landed from any boats or veſſels, and which ſhall afterwards be properly ſalted and cured, there ſhall be paid a bounty of 1*s*. *ſ*. 2. Bounty for every barrel of mackarel twice packed and cured, and exported, except to the *Mediterranean*.

And it ſhall be lawful to carry from any port in the united kingdom of *Great Britain*, to any port in the ſaid united kingdom, any mackarel, or any cod, ling, hake, or ſalmon, being taken in the mackarel fiſhery, and cured for home conſumption. *ſ*. 3. Mackarel, &c. may be carried from one port to another for home conſumption.

The officer appointed to pay the bounties given by this act ſhall keep in hand the following ſums, until the ſame ſhall amount to 200l. *viz*. For every barrel of mackarel on which the bounty of 1*s*. ſhall be payable 6*d*.; and for every barrel of mackarel on which the bounty of 2*s*. 8*d*. ſhall be payable, 1*s*. 6*d*.; and ſhall pay over the ſums ſo retained for the purpoſe of defraying the charges attending the obtaining and paſſing this act, to the ſolicitor thereof: provided ſuch charges do not exceed in the whole 200*l*. *ſ*. 4. Officers for paying bounties to retain money to defray the charges of this act.

This act ſhall continue in force until 1ſt June 1797, and from thence to the end of the then next ſeſſion of parliament, *ſ*. 5. Continuance of act.

TRIAL OF JOHN REEVES, Esq.

For a Libel on the Constitution.

Guildhall, May 20.

BEFORE LORD KENYON AND A SPECIAL JURY.

THIS was an information filed by his Majeſty's Attorney-General againſt John Reeves, Eſq. for deviſing and intending to create diviſions and diſſentions between the ſubjects of this realm, and for endeavouring to alienate their affections from the true and free principles of the Conſtitution.

The Attorney-General ſaid, he had the honour of appearing before the Jury, in conſequence of a command from his Majeſty, made at the deſire of the Houſe of Commons, that he would give orders to his Attorney-

General to proſecute the Defendant, for publiſhing a pamphlet, which, by the vote of the Houſe, they had adjudged to be a ſcandalous and malicious libel, calculated to create jealouſies and diviſions among the liege ſubjects of the realm, and to ſubvert the true principles of our happy Conſtitution. The Houſe of Commons had voted the Pamphlet in queſtion to be a high breach of their privilege, and had conceived it the beſt mode which could be adopted, to ſubmit the queſtion, whether the Book was of the libellous nature they had voted it to be, to the conſideration of a Jury.

The Attorney-General ſaid, he had taken no part in the debate in the Houſe of Commons, becauſe the Debate being whether he ſhould or ſhould not bring the proſecution, he thought it beſt not to deliver his ſentiments upon the ſubject at that time. The ſame principles on which he had always conducted Trials for libels, he ſhould think it his duty to purſue in this; and he had conſidered, and ſhould deſire the Jury to conſider, not any particular parts of this book which might alone appear of a libellous tendency, but to conſider the work from the beginning to the end; and then, if they were ſatisfied that, if the parts, with reference to the whole, were of the dangerous and libellous nature alledged, it would be their duty to find him guilty of the charge. The Libel, which conſtituted the offence, was a book, or pamphlet, entitled "Thoughts on the Engliſh Government, addreſſed to the quiet good ſenſe of the people, in a ſeries of letters." The part more particularly the ſubject of his animadverſion was that wherein he conſidered the Government of England as a Tree, the trunk of which repreſented the King, and the branches the Lords and Commons; and then obſerved, that the branches may be lopped off, and the tree is a tree ſtill, ſhorn indeed of its honours, but ſtill it is a tree, implying that the regal office might exiſt independant of the other two branches of the Legiſlature; what, ſaid the Attorney General, the King exiſt after the annihilation of the other parts of the Conſtitution? under ſuch circumſtances he might exiſt as a King, but he was ſure not as a Britiſh King. Nothing he was ſure could be of more fatal conſequences to this Country than a ſeparation of the Executive and Legiſlative powers; it had been attended with the moſt deſtructive events in former periods. It was a principle acknowledged at the Revolution,

tion, that the King ſhould call his Parliaments frequently, yet the Defendant had aſſerted in his pamphlet, that the King might diſpenſe with calling Parliaments, and his functions be equally well carried on. The Attorney General entered into a comment upon the nature, general tendency, and natural conſtruction of the pamphlet, the principal part of which was read; and contended ably, that from the general contents, it was calculated to produce the effects alledged in the information. Witneſſes were called to prove the printing of the pamphlet, and that Mr. Reeves corrected the proofs; but Mr. Plumer, the Defendant's Counſel, ſaid Mr. Reeves did not wiſh to ſhrink from the charge, and had deſired him to admit the publication.

Mr. Plumer addreſſed the Jury in one of the moſt brilliant and animated pieces of forenſic eloquence ever delivered within our remembrance upon a ſimilar occaſion. He ſtated, that his client, the defendant, wiſhed to meet the charge fairly, without the leaſt idea of reſting his defence upon points merely of form; for which reaſon it was he had inſtructed him to admit the publication; and he was deſirous, if there was any thing criminal in the pamphlet in queſtion, that it ſhould attach entirely to the Defendant, who certainly was the ſole author of it; but he would contend, that there was no part of the pamphlet that could be conſtrued in any point of view, injurious to the character his client had ever been ambitious of maintaining; which was, that of a real friend to the principles of the conſtitution as eſtabliſhed at the Revolution. There was not a man in the kingdom who had exerted himſelf in a greater degree than the Defendant, to counteract and repreſs thoſe principles of Republicaniſm and Democracy which were ſo inimical to the welfare and good order of every well-regulated community, but of this more particularly; and it was not to be ſuppoſed, a man, whoſe life had been devoted to maintain thoſe doctrines which were ſo peculiarly connected with the principles by which the Engliſh Government was maintained, could have written the Pamphlet with the view charged in the information. However the Defendant might have expreſſed himſelf improperly with reſpect to the particular parts of the Pamphlet which were made the ſubject of cenſure, he was well convinced, that when thoſe paſſages were conſidered with reference to the general tenor of the

whole of his obſervations, they would be found to convey very different ideas from thoſe which had been annexed to them, in conſequence of conſidering them ſeparately, and unconnected with the general tendency of his obſervations. Mr. Plumer then went through the whole of his obſervations, which were included in the information, as charges founded by the vote of the Houſe of Commons; and from the political ſentiments of the Defendant throughout the whole of his life, from the doctrines inculcated in other parts of the book, which were diametrically oppoſite to the ideas conveyed by the objectionable paſſages, when taken independent of the general context; he concluded, that the Defendant had by no means deviated from thoſe principles which it had ever been his chief glory to ſupport.

To pretend to give the public the moſt diſtant idea of the beauties of Mr. Plumer's ſpeech, is incompatible with the limits to which we are compelled to confine our obſervations. Let it ſuffice to ſay, it was calculated, in the ſtrongeſt manner, to impreſs the Jury, as well as the whole Court, with the fulleſt conviction, that his client, whom he ſo well defended, was far from being a man likely to wiſh to inſtil into the minds of his countrymen, principles ſo ſubverſive of the Conſtitution of this country.

Lord Kenyon obſerved, that the cauſe had been ſo well argued by the Counſel on both ſides, that little remained for him to ſay. He had never read the book in queſtion, nor had he heard any part of it read till he came into Court that day; he thought it beſt to avoid reading it till it came in judgment before him. His Lordſhip ſtated the points that were for the conſideration of the Jury, he told them they were to conſider the book collectively, and judge of the *quo animo* of the Defendant. It was not his province to judge of it, it was the duty of the Jury entirely. If he had been to determine, he would have read the book attentively, and formed his judgment upon its contents; he recommended the Jury to take the book, and carefully peruſe it, it was with them to form their judgments of the motive of the Defendant, and the real doctrines which he meant to promulge to the world; he would therefore leave it entirely in their hands.

The Jury took the pamphlet, and were abſent about an hour and a quarter: when they returned they pronounced the Defendant—Not Guilty.

County Rate.

A COUNTY rate may be levied for a town erected into a county of itſelf by charter many years ago, although no ſuch rate has been ever levied before.—This was decided in the caſe of *James* v. *Green and others Ea. Ter.* 35 *G. III.* which was as follows: The quarter ſeſſions for the town and county of the town of *Nottingham* appointed a high conſtable for the enſuing year, for the ſpecial purpoſe of collecting and raiſing from the churchwardens and overſeers of the poor of each pariſh within the town, the rates and aſſeſſments to be levied in the nature of a county rate. The ſame ſeſſions appointed a treaſurer to receive ſuch ſums as the high conſtable ſhould collect, by virtue of ſuch rates, which ſhould be deemed to be a public ſtock, ſubject to the legal order of the ſeſſions; at the ſame time the juſtices ordered 50*l.* to be aſſeſſed upon the town and county of the town, in a certain proportion upon the three ſeveral pariſhes whereof it conſiſted, in the nature of a county rate, *for the relief of priſoners in the gaol; for the relief of priſoners in the King's Bench and Marſhalſea priſons; repairing and furniſhing the houſe of correction, with the keeper's ſalary, the treaſurer's ſalary, the charges concerning vagrants, ſoldiers' carriages, convicting and tranſporting felons, and other charges to which the ſame was by law applicable within the ſaid town.* The town of *Nottingham* was formerly part of the county of *Nottingham*, and a corporation by preſcription from time immemorial, and has had a gaol in the town, under the cuſtody of, and always repaired by, the corporation. *Henry VI.* by a charter in the 27th year of his reign, after reciting and confirming various charters by former kings, incorporated the town by the name of the mayor and burgeſſes of the town of *Nottingham*, and made it a county of itſelf; and in that and former charters *there were grants of fines, forfeitures, and certain eſtates for the purpoſe of defraying future as well as preſent burthens ariſing within the town.* But no power is expreſsly given by any of the charters to appoint a high conſtable or treaſurer; *nor was a high conſtable or treaſurer ever appointed before the preſent, or any county or other rate in the nature of a county rate made within the town, until the preſent. Neither have the inhabitants of the town ever contributed to the rate for the county at large.*

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The overſeers have uſually paid the conſtable for apprehending vagrants, without any rate being made; and alſo for the ſupport of the families of militia men; *and all the other charges in the rate (except as above ſtated) have been paid by the corporation of Nottingham out of their own funds.* The houſe of hoſpitallers in *Nottingham* was granted by *Ed. VI.* to the corporation, for the purpoſe, as is expreſſed in the charter, of better enabling them to repair and ſuſtain the bridges up the *Trent*; the corporation, about 70 years ago, converted the houſe into a houſe of correction, to which purpoſe it has been ever ſince applied, and the different keepers of it have always been appointed by the mayor.—In this caſe, two queſtions aroſe; *viz.* 1ſt. *Whether the juſtices had power to levy any county rate at all for ſuch purpoſes?* 2ndly, *Whether the preſent rate in the form of it was good?* As to the FIRST POINT it was contended, that it appeared from the charters and from the uſage, that the corporation had in former times accepted grants of eſtates for the purpoſe of defraying future, as well as preſent burthens, and that *it was ſtrong evidence to ſhew that ſuch was the intention of thoſe grants in the opinion of the grantees themſelves, that until lately they had always defrayed all county charges out of their own funds;* and that therefore they were concluded now from controverting their liability. As to THE SECOND POINT, if they were ſtill at liberty to raiſe county rates for the firſt time, it was contended, that if any one of the purpoſes for which the rate was expreſſed to be levied were bad, the whole rate was bad; and it was inſiſted, that here the juſtices had exceeded their juriſdiction, by making an order to raiſe county rates for purpoſes to which they are not by law applicable. For the rate purported on the face of it to be made, 1ſt. For the relief of priſoners in the gaol; *whereas the corporation have always relieved the priſoners out of their own funds;* and the grants of fines and forfeitures to them under their charters, were probably for this very purpoſe. That they had always had the cuſtody of the gaol, and conſequently were bound to maintain the priſoners; and could not relieve themſelves from that burthen, without expreſs authority. That, in the next place, the rate purported to be made *for the repairing and furniſhing the houſe of correction, and alſo for paying the keeper's ſalary*; and as to this it was obſerved, that the ſtat. 7 *Jac. I. c.* 4. *ſ.* 2. requires a houſe of correction to be provided in every county;

county; and the 4th ſection enacts, that the quarter ſeſſions ſhall appoint at their pleaſure a governor of the ſame; that the 17 *G. II. c.* 2, *ſ.* 31. which places ſuch houſes under the management of the juſtices at the quarter-ſeſſions, and requires them to be fitted up and furniſhed, *expreſsly excepts ſuch houſes of correction as have been erected or maintained by any particular founders*; it was therefore contended, that in this caſe the corporation were the founders and maintainers of this houſe of correction, and had always appointed the keeper, which ſhewed that it was expreſsly within the exception of the ſtat. 17 *G. II.*—By lord *Kenyon* Ch. J. and the COURT, (ſtopping the other ſide) it appears from the caſe, that *Nottingham* was ſeparated from the county at large, and made a county of itſelf by the charter of *Henry VI.* and though it had no ſuch officer as a high conſtable before, yet I conceive that by the common law, but certainly by the ſtatute of *Wincheſter*, all officers of this nature are incident to the creation of ſuch a diſtrict, having ſeparate juriſdiction; and it is no new thing, if we may have recourſe to analagous caſes, at this day to appoint officers in places where none were in fact appointed before, if by law ſuch an appointment may be made. In the caſe of vills, the court have in modern times frequently granted writs of *mandamus*, to appoint overſeers of the poor for the firſt time, as ſoon as the exigencies of the place required it. So *here when certain public expences were to be defrayed, it was fit that proper officers ſhould be appointed, and rates collected for that purpoſe*: many of theſe charges have ariſen in latter times: and *though the corporation, in whom the government of the place reſides, might have thought proper, while ſuch charges were ſmall, to pay them out of their own funds, yet as they became more heavy, that could not preclude them from recurring to legal methods of raiſing ſupplies for that purpoſe from the public*; ſome perſon or other muſt be liable to theſe burthens, and I ſee no evidence that would ſuſtain a proſecution againſt the corporation for not diſcharging ſuch demands. *The circumſtance of their having hitherto taken this burthen on themſelves, will not of itſelf diſcharge other perſons on whom the law has impoſed that liability.* As to the preſent houſe of correction; it ſeems the corporation gave their houſe of hoſpitallers for that purpoſe ſome years ago; other perſons have given buildings for the like purpoſe: but it never can be argued from thence, that ſuch perſons

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are therefore chargeable with all ſubſequent repairs and burthens incident thereto. The exception in the ſtatute of the 17 *G. II.* does not apply to caſes of this kind, but was inſerted with reference to ſuch perſons as were bound by tenure, grant, or preſcription to keep up eſtabliſhments of this nature; the circumſtance relied on here, of the mayor's having appointed the keeper, can only be attributed to the curteſy and deference paid by the reſt of the juſtices who are aldermen, to him as their head. I ſee no objection to any of the purpoſes for which this rate is expreſſed to be made. 6 *Durnf. & Eaſt*, 228.

SUBALTERNS *in the* MILITIA *to have an Allowance during Peace.*

Subalterns to have an allowance during peace.

BY 35 *G. III. c.* 35. From the diſembodying of the militia, every ſubaltern officer, who now bears a commiſſion, is ſerving, and ſhall continue faithfully to ſerve in the ſame corps, or who, previous to four months from the paſſing of this act (viz. 20th *April* 1795,) ſhall have a commiſſion and continue to ſerve in the embodied militia, and in the ſame corps, until the diſembodying thereof, ſhall have the following annual allowances over and above his pay, without any deduction whatſoever (viz.) a *lieutenant* 25l. and an *enſign* 20l. *per annum*, in manner herein after mentioned. *ſ.* 1.

Exceptions.

Provided, that no perſon who ſhall be poſſeſſed of ſuch an eſtate or income as would qualify him to hold a captain's commiſſion in the militia; or who ſhall be adjutant, or battalion clerk; nor any perſon deriving in any way whatſoever, otherwiſe than as a ſubaltern officer of the militia, any income whatever from the public; nor any officer on the full or half pay of the navy, army, or marines, who ſhall alſo hold a ſubaltern's commiſſion, and ſerve as aforeſaid in the militia, ſhall be entitled to the ſaid annual allowance, or any part thereof. *ſ.* 2.

Oath to be taken before a juſtice.

And every ſubaltern who ſhall claim the ſaid allowance, ſhall, previous to receiving the ſame, take and ſubſcribe annually before a juſtice for the county or place to which the corps in which he ſerves ſhall belong, the following oath, or to the like effect:

I A. B. *do ſwear, that I am now ſerving as a ſubaltern officer in the* Weſtmoreland *corps of militia; and that I am not*

not, in my own right, or in right of my wife, nor have been since the diſembodying of the ſaid corps, in the actual poſſeſſion and enjoyment or the receipt of the rents and profits of lands, tenements, or hereditaments of ſuch an annual value, above reprizes, as would qualify me to hold a captain's commiſſion in the militia; and that I am not, nor have been ſince the diſembodying of the ſaid corps, an adjutant or battalion clerk in any corps of militia; that I do not hold or enjoy, nor have I held or enjoyed, nor does or has any perſon for me hold or enjoy, or held or enjoyed, ſince the diſembodying of the ſaid corps, any office or income whatſoever from the public; and that I am not entitled either to the full or half pay, of the navy, army, or marines, nor have been ſince the diſembodying of the ſaid corps. So help me God.

Which oath ſo taken and ſubſcribed, ſuch juſtice ſhall forthwith certify and tranſmit to the receiver-general of the land tax of the county or place to which ſuch militia ſhall belong, to be by him filed for the purpoſes hereafter mentioned. *ſ.* 3. And to be tranſmitted to the receiver-general.

And every ſubaltern who ſhall claim the benefits of this act, ſhall regularly attend the annual exerciſe during the whole of the 28 days, and ſhall perform his duty as a ſubaltern officer, on pain of forfeiting the ſaid annual allowance, as well as the reſt of his pay for that year; and certificates of his having ſo attended and performed his duty, ſigned by the commanding officer, ſhall be tranſmitted by him to the lieutenant, and receiver-general of the county or place to which ſuch militia ſhall belong, to be by ſuch receiver-general received previous to ſuch ſubaltern receiving ſuch allowance; and in caſe ſuch ſubaltern ſhall by his commanding officer be permitted for any ſpecial cauſe or unavoidable neceſſity to be abſent during the whole or any part of ſuch annual exerciſe, then the reaſon for ſuch abſence, as well as the duration thereof, ſhall be ſpecified in ſuch certificate; and a like certificate ſhall alſo be tranſmitted to the ſecretary of ſtate for the home department. *ſ.* 4. To attend the annual exerciſe, and certificates thereof to be tranſmitted.

Provided, that in caſe ſuch militia ſhall not be called out to annual exerciſe, every ſuch ſubaltern ſhall be entitled to the ſame annual allowance as if he had attended the ſame, and a certificate had been tranſmitted as aforeſaid. And upon ſuch certificates of ſuch juſtice and commanding officer as aforeſaid, or (when not called out to annual If not called out to annual exerciſe, to have the ſame allowance.

exercise) upon a certificate of such justice only being produced to the receiver-general, he shall pay such annual allowance as aforesaid, to such subaltern in addition to his pay without any deduction as aforesaid; which shall be allowed in his accounts. *s.* 5. 6.

Not attending when called upon, to forfeit the allowance.

And all such subalterns shall at all times be liable to serve in their respective corps when the militia are called out upon actual service; and if any such subaltern shall not attend when called upon, or shall a second time neglect or refuse to attend at the annual exercise, he shall forfeit his claim to the said allowance in all time to come, and shall also be considered as having resigned. *s.* 7.

Allowances to be paid by the receivers-general.

The said annual allowances shall be paid by the receivers-general, upon production of the certificates, as soon after the annual exercise and training as may be; and nothing in this act shall prevent any subaltern officer from receiving the pay allowed for his attendance at annual exercise, over and above the said annual allowance. *s.* 8.

No allowance while the militia is embodied.

But nothing in this act shall entitle any subaltern officer as aforesaid to the said annual allowance, during the time the regiment shall be embodied or called out on actual service. *s.* 8.

Allowance not to extend to more than a certain number of subalterns.

Also this act, and the allowances therein, shall not extend to more than ten lieutenants in any regiment consisting of more than ten companies; to more than nine lieutenants in any regiment consisting of more than eight and less than eleven companies; to more than eight lieutenants in any regiment consisting of more than six and less than nine companies; to more than five lieutenants in any regiment, battalion, or corps, consisting of six or of a less number of companies. *s.* 8.

Senior lieutenants to have the preference, and the junior to succeed on vacancies.

In case in any regiment, battalion, or corps, at the time of disembodying thereof, there shall happen to be a greater number of lieutenants coming within the descriptions of this act than can be entitled to the benefits thereof, within the meaning of the foregoing proviso, the senior lieutenants shall always be preferred, and be alone entitled to the allowances, and the junior lieutenants shall succeed to such allowances, in rotation, as vacancies may happen among the senior lieutenants. *s.* 9.

Power of discharging officers at the end of every five years, not to

Nothing in the general militia act 26 *G. III. c.* 107. for discharging a certain number of officers for the purposes and in the manner in the said act mentioned, shall extend to empower the lieutenant or deputy lieutenants, to dis-

charge

charge any ſubaltern officers entitled to the benefits of this act. *ſ.* 10. extend to ſubalterns entitled under this act.

This act ſhall continue in force until the 25th of *March* 1796, and no longer. *ſ.* 11. Continuance of act.

UTTERING *a* PRETENDED WILL, *the ſuppoſed Teſtatrix being ſtill living.*

THE following extraordinary trial will apologize for our inſerting it in this Miſcellany. At the Old Bailey in September ſeſſion 1773, *John Sterling* was tried before Mr. Juſtice *Nares*, preſent Mr. Juſtice *Aſhhurſt*, and Mr. Serjeant *Glynn*, Recorder, for forging the laſt will and teſtament of *Elizabeth Shuter*, ſpinſter, with intention to defraud the South-Sea Company. There were five other counts for uttering and publiſhing the ſaid will, knowing it to be forged; and charging the priſoner with an intention to defraud, *firſt* Elizabeth Shuter; and ſecondly *Daniel Crofts*. Forgery may be committed on an inſtrument, though ſuch an inſtrument does not exiſt either in law or in fact.

The ſtyle of the Company was read from the Charter, which correſponded with the ſtyle of the Company as ſet forth in the indictment. The circumſtances of this caſe, as they appeared upon the evidence, were as follow:

The priſoner *John Sterling* was a young man inhabiting chambers in the temple, and *Elizabeth Shuter*, the ſuppoſed teſtatrix of the will, was his laundreſs. On the 20th of February 1773, the priſoner applied to the clerk of Mr. Biſhop, a Proctor in Doctors' Commons, in order to prove the will of one Mrs. Shuter deceaſed, whom he repreſented to have lived, during her life-time, at *Tooting* in *Surrey*. He accordingly took the oath before the ſurrogate, and the probate of the will was accordingly made out and delivered to him. On the 22d of February he took the probate to the South-ſea-houſe, and entered it there with the proper clerks; in conſequence of which on the 25th he went to the proper offices and ſold out 350*l.* ſtock.

The will was produced, in which Mrs. Shuter was made to give "to her dear maſter and very good friend "*John Sterling*, of the Middle Temple, ſole executor, 350*l.* "South-ſea annuities, and all her other eſtate and effects, "in truſt, to make ſale of, &c. and out of the money "ariſing from ſuch ſale to pay all her juſt debts, &c.

" then to retain to his own benefit 30*l.* for his trouble as " executor, and divide the reſidue among her relations," who were ſpecified; and it purported to be ſigned and delivered by her in the preſence of two witneſſes. *Elizabeth Shuter* was herſelf produced to prove that the ſignature to the will was not her hand-writing, and the jury found the priſoner guilty; but the judgment was reſpited, upon a doubt, Whether as the ſuppoſed teſtatrix was living, the priſoner was legally convicted of having forged her *laſt will* and teſtament; there being no ſuch inſtrument as a laſt will and teſtament, in contemplation of law, until *after the death* of the perſon making it.

But, upon the authority of the caſe of *Ann Lewis*, in *Foſter's* Reports, the judges were unanimouſly of opinion that an inſtrument may be the ſubject of forgery, though in fact it ſhould appear impoſſible for ſuch an inſtrument, as the inſtrument forged, to exiſt, provided the inſtrument purports, on the face of it to be good and valid, as to the purpoſes for which it was intended to be made.

The priſoner received ſentence of death, and was executed.

At the Old Bailey, in May ſeſſion 1787, John Cogan was convicted of a ſimilar offence.

Cases *which ſeem to have* Puzzled The Bench.

The Trial of Joseph Alexander.

Qu. if a falſe oath taken in Doctors' Commons for the purpoſe of obtaining a *marriage licence* is perjury?

AT the Old Bailey in January ſeſſion 1767, *Joſeph Alexander*, a negro ſervant belonging to the duke *de Nivernois*, was indicted for wilful and corrupt perjury, in falſely ſwearing in Doctors' Commons, that *Charlotte* the daughter of *Robert Neſbit*, Eſq. of Marybone, was of the age of twenty-one years and upwards, whereas in truth and in fact ſhe was only of the age of ſixteen years and ten months.

It appeared in evidence, that the priſoner, being left in England at the departure of the duke his maſter, had procured recommendations to Mr. *Neſbit*, and was admitted into his houſe in the character of a preceptor, to teach his daughter the French language, and other faſhionable accompliſhments, of which the priſoner was perfect maſter. Taking advantage of the opportunities which his employment afforded him, he obtained Miſs *Neſbit's*

Neſbit's conſent to marry him. In order to warrant a clergyman to perform the ſervice, he obtained a *licence* by means of the *falſe oath*, for which he was now indicted; and in conſequence of which the parties were married.

The jury found the priſoner guilty; but the caſe was reſerved for the opinion of the *Twelve Judges*. The queſtion was agitated ſeveral times; but the priſoner dying in Newgate, the reſult of their Lordſhips' deliberations was never publicly communicated.

The ſame point alſo came before the judges in the caſe of *Robert Woodman*, who was indicted at the Old Bailey in September ſeſſion 1768, before Mr. Baron *Perrot*, preſent Mr. Juſtice *Willes*, for perjury in an affidavit in Doctors' Commons, in order to obtain a licence to marry one Catharine *Hill*, Spinſter, to which he knew no lawful impediment; *whereas*, in truth and in fact he knew ſhe was the wife of *Ezekiel Shepherd*. But the opinion of the Judges was not publicly communicated.

Trial *of the* Biſhop *of* Bangor *at* Shrewsbury Aſſizes.

TUESDAY, *July* 26, 1796, came on the trial of the Biſhop of Bangor, and others, for an aſſault and riot, &c.

The indictment ſtated, "That Samuel Grindley, Gentleman, is Deputy Regiſter of the Epiſcopal Conſiſtorial Court of the Biſhop of Bangor, in conſequence of which he has a right to occupy a certain office-room adjoining the Cathedral Church of Bangor, called the Regiſter Office, for the purpoſe of tranſacting the buſineſs of the ſaid office; that John Warren, Lord Biſhop of Bangor, Hugh Owen, John Roberts, John Williams, and Thomas Jones, being *evil diſpoſed perſons*, deſirous of diſturbing Samuel Grindley in the execution of his office of Deputy Regiſter, did, on the 8th of January laſt, moleſt and diſturb the peace of the King, with a view of removing the ſaid Grindley from his office, by force of arms. For this purpoſe they united themſelves with perſons to the number of two hundred, who broke and entered the ſaid Regiſter Office, where they remained for an hour, making great noiſe and diſturbance, and greatly terrifying the ſaid Samuel Grindley and his ſervants, and did make an aſſault on the

"ſaid

" ſaid Grindley, whom they did violently beat and wound, " ſo that his life was deſpaired of, ſaying that the ſaid " Grindley did unlawfully aſſume the ſaid office, and " threatening at the ſame time, his life; that the ſaid " Biſhop of Bangor, &c. ſtirred up the multitude to expel " the ſaid Grindley from his office, to the manifeſt diſ- " turbance of the King's peace, the danger of breeding a " riot, and ſpilling much blood."

The indictment contained ſeveral other counts, which were mere ſpecifications of law. The above is the whole ſubſtance of the indictment.

The caſe on the part of the proſecution was opened by Mr. Adam; and after a long exordium on the ſingularity of a Chureh Dignitary, being placed in the ſituation in which the defendant now ſtood, gave a long detail of the circumſtances which led to the aſſault for which the preſent indictment was laid. He ſtated the proſecutor (Mr. Grindley) to be the Deputy Regiſter of the Epiſcopal Conſiſtory Court of the Dioceſe of which the Defendant was the Biſhop, and likewiſe his Agent, to which office he was appointed in the year 1792, which appointment was confirmed in the uſual form, and of which Mr. Grindley kept quiet and uninterrupted poſſeſſion till the autumn of 1795, which was juſt at the eve of a General Election: on which occaſion the proſecutor was ſolicited by the Biſhop for his vote for a friend who intended to ſtart for Cærnarvonſhire; a refuſal to comply with which Mr. Adam ſtated as the cauſe of the ſubſequent antipathy conceived againſt Mr. Grindley, who finding his ſituation as Agent to the Biſhop very uncomfortable, ſpeedily reſigned that ſituation, and manifeſted his intention of likewiſe giving up his office of Deputy Regiſter, on the 22d of February, 1796, being the day on which his year expired. After ſome very ſevere animadverſions on the conduct of the Defendant, ſubſequent to this intimation, Mr. Adam proceeded to enumerate the circumſtances which followed, and which were the grounds of the preſent indictment. The Defendant, he ſaid, became hoſtile in the extreme to Mr. G. and refuſed to accept his reſignation, which has not yet regularly taken place, nor could it under the exiſting circumſtances, as in that caſe he would ſtill be reſponſible for the ſafe keeping of the papers in the office, without having the *actual* cuſtudy. In this ſtate of things, between the 4th and 8th of January, the Biſhop ſent for the Seals of the Office, and obtained one:—He afterwards

wards ſent for the keys, which were refuſed by Grindley's deſire. When Grindley returned on the 7th of January he found that a blackſmith had taken off the lock of his Office, by deſire of the Biſhop, and placed a new one upon it, of which the Biſhop took the key. In this ſituation of things, Grindley found himſelf excluded from his office. He reſolved to protect himſelf and character againſt ſuch an unwarrantable attack, and therefore determined to regain poſſeſſion of his office. From the mode adopted by the Biſhop in ſeizing the office, Grindley had reaſon to believe that force would be oppoſed to him, and therefore prepared himſelf with means of defence. The proſecutor would ſtate theſe things on oath. He went with unloaded piſtols to his office, becauſe his intention was only to gain poſſeſſion of it; but when in poſſeſſion, he loaded his piſtols to defend himſelf.

Soon after he obtained poſſeſſion, one of the Biſhop's ſervants came, and he preſented the unloaded piſtol to him. The Biſhop and others next came in a moſt boiſterous tone and violent manner; he hallooed in ſo loud a voice that it was not known by the perſons beſt acquainted with him. Mr. Grindley admitted the Biſhop, but deſired his ſervants to retire. The Biſhop continued his menaces in a moſt provoking manner—in ſuch a ſituation a worm would turn; but Mr. Adam was perſuaded the Jury would find, that Mr. Grindley had acted with the greateſt moderation and prudence. This tumult continued, till the arrival of Mrs. Warren and two other Ladies, who took the Biſhop by the arm, and with great difficulty prevailed on him to return home.

Here Mr. Adam concluded his opening; and called

Samuel Grindley, who depoſed nearly to the tenor of what we have ſaid above; with the following addition of circumſtances, viz. that when he found the office had been broke into on the preceding night, the Biſhop told him that it had been done by his ſervants, acting under his directions. After finding this, he on the following morning returned, with his ſervants and clerks, and forced open the outer, and then the inner doors. When he was in the office, Thomas Jones, one of the Deſendants, attempted to oppoſe his entrance. Jones ſaid, it was his office: he was in ſight of the Biſhop's palace, and called for aſſiſtance from them; then John Raſbrook the Biſhop's Houſe Steward, came out, crying to others,

"Follow

"Follow me!" He was followed by half a dozen ſervants. When he ſaw them running towards him, he ordered Jones to be turned out. Raſbrook came near, and the witneſs pulled out an empty piſtol, ſaying he would ſhoot him, and Raſbrook ran away. Jones being turned out, the witneſs, and his ſervants, faſtened themſelves in the inner office, where they peaceably remained. In a quarter of an hour, one of the ſervants ſaid, there was loud rapping at the door, and a loud voice. Witneſs ſaid, if any one was there who meant to enter the office by force, they would do it at their peril; he then loaded one piſtol with powder and ſhot, and repeated that he would defend his office, and ſhoot the firſt perſon that entered. A voice called out "*Will you ſhoot the Biſhop?* The ſame voice deſired the door to be opened for the Biſhop —"Yes," ſaid the witneſs, "it ſhall be opened to his "Lordſhip, if he will enter peaceably;" the door was then opened and the Biſhop entered in a very great rage; other perſons were with him. The Biſhop ſaid, "Fine work!—you ſhall not remain here." The Biſhop firſt took hold of the witneſs, and then took hold of the witneſs's huſbandman. He then ſeized a ſecond ſervant, and attempted to turn him out; he next returned to the huſbandman and puſhed him about. The biſhop then walked about with his handkerchief in his hand, in a great paſſion; doubled his fiſts at the witneſs, and holding them up, ſaid he ſhould be turned out. The Biſhop ordered his ſervants to come in and turn out the witneſs, who ordered his own ſervants to remain quiet: he begged repeatedly for peace of the Biſhop, ſaid the place was his caſtle, and he had a right to defend himſelf in it. The Biſhop ſent for a magiſtrate. One of the Biſhop's ſervants frequently ſaid, let us turn him out. Roberts, one of the Defendants, ſaid, if no one elſe would turn him out, he would. The Biſhop deſired him to take care, as the witneſs had piſtols, and Roberts ſaid, "ſhoot me, don't ſhoot the Biſhop." Roberts then challenged him to retire to the church-yard, and the witneſs anſwered he was not afraid of him in any place, but would not follow him then. Roberts continued in the office very abuſive, together with another Defendant a clergyman, who was alſo very loud and abuſive.—Williams, another clergyman, behaved in a ſimilar manner, but not quite ſo noiſy; he often deſired Williams to go away, but he ſaid he came there by

requeſt

requeſt of the Biſhop, and would not go away. At laſt a Magiſtrate, with a conſtable, came, and were ordered by the Biſhop to do their duty. The Magiſtrate declined interference. And at laſt the Biſhop's Lady, and two other Ladies in tears, came, and by long entreaties, and laying hold of the Biſhop by the arm, prevailed on him to return home.

A long croſs-examination of the witneſs took place, with reſpect to the means reſorted to for gaining and for maintaining poſſeſſion of the office.

Thomas Pritchard, one of Mr. Grindley's Clerks, corroborated the general circumſtances depoſed to; but on his croſs-examination, ſaid, "That the firſt of the riot "began by Grindley's attempt to turn out Jones."

Another witneſs depoſed to the ſame effect; and ſaid, that the biſhop entered the office in a great paſſion, ſtamping his feet, ſaying, "Fine work, fine work!" "Yes," ſaid Grindley, "fine work in breaking open my office." "Your office!" ſaid the Biſhop, "you muſt quit it." The Biſhop then went towards Grindley, as if he had a mind to collar him. The Biſhop afterwards grappled Roberts, one of Grindley's ſervants, by the collar, and attempted to puſh him towards the door.—Roberts, Chaplain to the Biſhop, challenged Grindley to follow him out. This was, however, declined by Grindley.

Here ended the evidence on the part of the proſecution.

Mr. Erſkine, in reply, contended that Mr. Grindley had never been regularly and legally appointed to the office, therefore had no right to retain poſſeſſion by force. The object of the preſent proſecution, Mr. Erſkine aſſerted, was merely to expoſe and degrade the Biſhop.

Mr. Erſkine thought there was no occaſion to call evidence; and the counſel for the defendants, ſeemed to think the matter ſo clearly in favour of their clients, that there might be no reaſon to proceed further. The Jury conſulted a ſhort time, and they, as well as the Judge, ſeemed inclined to proceed; Mr. Erſkine, after ten minutes conſultation, finally reſolved to call no evidence in defence.

Mr. Juſtice Heath, in his charge to the Jury, thought it was ſatisfactorily proved that Grindley was Deputy Regiſter, but if any diſpute on the ſubject aroſe, the Biſhop ſhould have appealed to a court of Law, and not have

proceeded in the way he had. It did not appear that the Biſhop had a right to diſpoſſeſs Grindley of the office, and therefore the Biſhop was not in peaceable poſſeſſion of the office. He had obtained poſſeſſion by unwarrantable violence. Grindley's arming himſelf was very improper; it was a breach of the peace; but his breaking into the office was ſtrictly juſtifiable. The Proſecutor's preſenting a piſtol to Raſbrook was alſo improper, but that was no excuſe for the Biſhop to come in the tumultuous manner he did. The Biſhop ſeemed to have acted under two great errors; firſt, that he had a right to remove the proſecutor; and ſecond, that he had a right to do ſo by violence. Going up to a perſon in a threatening manner, with hands clinched near enough to ſtrike, was an aſſault. It was a breach of the peace for the Biſhop to order his ſervants to turn out Grindley—Roberts's alſo challenging Grindley to fight, was a breach of the peace; and the act of one in the ſituation of the defendants, was the act of all who were preſent.

The Biſhop no doubt was a very good man, but he had allowed his paſſion to get the better of him. This much affects the Biſhop and Roberts, and the Judge here mentioned the facts which criminated all the other defendants. Undoubtedly, ſaid he, the defendants came with the unlawful purpoſe of aſſaulting the Proſecutor. The force and violence uſed by Grindley ſhould be taken advantage of in another place (the Court of King's Bench;) it might there be pleaded in mitigation of puniſhment. It appears to me, ſaid the Judge, to be your duty to find the Defendants Guilty; but if you ſhould think otherwiſe, you will acquit them.

The Jury conſulted about ten minutes, and gave their verdict that all the Defendants were—*Not Guilty.*

An ABSTRACT *of an* ACT *for providing an* AUGMENTATION *to the* MILITIA, *to be trained and exerciſed in the Manner therein directed; and for enabling His Majeſty to cauſe the ſame to be embodied, in Caſe of Neceſſity, for the Defence of theſe Kingdoms.*

THIS Act authoriſes his majeſty's lieutenants of counties, in caſe of emergency, to call together, arm, and cauſe to be trained, the Supplementary Militia to be raiſed

raiſed by virtue of the act, and to appoint officers, as fully as they are authoriſed to execute the Militia Laws.

Officers who may be appointed are

Officers acting in the preſent Militia.

Other perſons qualified as required by the Militia Laws.

Officers in the army on full or half pay.

Who ſhall have no higher rank in the Militia than they have or had before.

Lieutenants, and deputy lieutenants of counties, may raiſe the Supplementary Militia either at meetings to be held under the former acts, or at meetings ſpecially appointed under the preſent act.

Deputy lieutenants and juſtices, at their firſt ſubdiviſion meeting, after having received the liſts of men liable to ſerve, as directed by 26 *G. III. c.* 107. are to make a duplicate thereof, and to amend ſuch duplicate, by inſerting the names of all men liable to ſerve in the Supplementary Militia, leaving out thoſe expreſsly excepted by the act, of which a return is to be made to the general meeting.

The general meeting appoint the number of men to ſerve for each Hundred, Rape, *&c.* within the county, which general meeting muſt be held before the ſecond ſubdiviſion meeting.

At the ſecond ſubdiviſion meetings the number of men to ſerve for each Pariſh, *&c.* are to be appointed.

At the third ſubdiviſion meeting, which is to be held within three weeks from the former (of which, and alſo of the number appointed to ſerve for each place, notice is to be given,) the deputy lieutenants are to cauſe a ballot for thoſe who are to ſerve.

At the fourth ſubdiviſion meeting, to be held within three weeks from the laſt, the men choſen by ballot are to be enrolled, and take the following oath, *viz.*

'I *A. B.* do ſincerely promiſe and ſwear, That I will 'be faithful, and bear true allegiance to His Majeſty 'King *George*; and I do ſwear, That I am a pro-'teſtant, and that I will faithfully ſerve in the Mi-'litia, within the kingdom of *Great Britain*, for 'the defence of the ſame, during the preſent war, 'and for the ſpace of one calendar month after the 'end thereof.'

Which oath may be adminiſtered by one deputy lieutenant or Juſtice.

Perſons choſen may produce ſubſtitutes, who, being

approved, ſhall be ſworn to ſerve for the ſame term; and the balloted men ſhall not be again choſen to ſerve in the Supplementary Militia; and any perſon choſen may, after enrolment, obtain his diſcharge by procuring a ſubſtitute.

No ſubſtitute to be rejected on account of the number of his children.

Any perſon may provide, and any perſons may offer to ſerve as volunteers at any time before the ballot for the county; ſuch volunteers to be enrolled and ſworn before a deputy lieutenant or juſtice.

But unleſs the volunteers ſhall in any ſubdiviſion amount to two thirds of the whole number to be raiſed for that ſubdiviſion, the deputy lieutenants ſhall on the day of ballot chooſe the remainder of men then wanted; and if the number ſhall amount to or exceed two thirds, then the ballot may be ſuſpended for five days, with liberty to his majeſty's privy council to grant a further ſuſpenſion, at the end of which time a ballot ſhall take place if any men are then wanted; but if the volunteers then enrolled ſhall make the full complement of men, then no ballot ſhall be had in that ſubdiviſion: But no perſon entitled to be exempted from ſervice as a Militia man, ſhall be permitted to enrol himſelf as a volunteer.

Overſeers who give money for volunteers, ſhall be reimburſed out of the poor-rates.

If the whole number of men ſhall not be choſen at the firſt ballot, the deputy lieutenants may cauſe other ballots to be taken, till the whole number ſhall be enrolled.

The levy of men for the Supplementary Militia ſhall not impede the levy of men required for the now exiſting Militia.

The penalty on a perſon choſen by ballot, for neglecting to be enrolled or to provide a ſubſtitute, is 15*l.* and he may again be choſen at any future ballot; and in default of payment, he ſhall be compelled to ſerve under the pain of being puniſhed as a deſerter.

Quakers are to be proceeded againſt in the manner provided by the act 26 *G. III. c.* 107.

The perſons exempted from ſerving in the Supplementary Militia, are as follow: *viz.*

Officers of the army, militia, and volunteer corps, (having been entered into ſuch corps on or before 20th *October* 1796,) or ſerving in any of his majeſty's caſtles, or forts.

Non-commiſſioned officers and private men ſerving in the

the army or militia, or in any volunteer corps, (having been entered before 20th *October*, or offered themſelves to fill vacancies happening before the ſaid 20th *October*.)

Clergymen—Licenſed teachers of ſeparate congregations—Reſident members of the univerſities—Conſtables or other peace officers—Articled clerks and apprentices, having been ſuch before 20th *October*—Seamen and ſeafaring men—Perſons muſtered, or employed in any of the king's docks, or dock yards, or in the Tower of *London*, *Woolwich Warren*, gun-wharfs, powder mills, or magazines, or ſtorehouſes belonging to the king under the direction of the ordnance—Perſons free of the watermens' company—poor men having more than three legitimate children under ten years of age, or infirm, gamekeepers enrolled to ſerve in purſuance of any other act to be paſſed in this ſeſſions—Perſons having ſerved perſonally, or by ſubſtitute, in the exiſting Militia—but no perſon diſcharged from the army, or any volunteer corps, or who has ſerved in the preſent Militia as a ſubſtitute, is exempted.

The deputy lieutenants may diſcharge perſons choſen by ballot who appear to them unfit for ſervice, and cauſe other perſons to be choſen.

Militia men becoming infirm after enrolment may be diſcharged.

Vacancies by death, or promotion, to be filled up by ballot.

Contracts between maſters and ſervants are not vacated, unleſs the ſervant, on being called to be trained, ſhall not return to the ſervice, allowing an abatement for his abſence, or unleſs the Supplementary Militia ſhall be embodied; in either caſe, one Juſtice may ſettle any difference concerning wages.

Perſons receiving money for their ſervice, and not appearing, ſhall refund the ſame, and 5*l.* to the perſon who advanced ſuch money, and in default of payment, ſhall be committed to hard labour in the gaol or houſe of correction; and perſons agreeing to pay money, either to a ſubſtitute or volunteer, may be compelled to pay the ſame by order of one Juſtice.

The ſupplementary Militia ſhall be trained and exerciſed for twenty days, to begin as ſoon as convenient after the paſſing of the act; and the whole may be trained together, or a part at a one time, and ſo ſucceſſively till the

the whole have been trained twenty days: The Supplementary Militia Men, ſhall be ſubject to the ſame Regulations as the exiſting militia during the times of annual exerciſe.

During the times of exerciſe the Supplementary Militia ſhall be commanded and exerciſed by ſuch officers, and non-commiſſioned officers, as ſhall be detached from the Militia of the county; and all ſuch officers ſhall be entitled to pay, above any pay they may be otherwiſe entitled to.

The Supplementary Militia Men ſhall have notice of the times and places of training and exerciſe: ſuch notices to be affixed to the church doors, and ſerved on, or left for the Militia men.

The clerks are to make out liſts of the men enrolled, and ſend them, together with notice of the time and place of exerciſe, to the commanding officer of the Militia for the county, and a duplicate to the adjutant.

Arms, accoutrements, and ſufficient cloathing, to be provided for the Supplementary Militia.

Militia men ſelling, pawning, or loſing, any arms, cloathing, or accoutrements, to forfeit not exceeding 5*l.* and if not immediately paid, may be committed to the houſe of correction for three months.

Militia called out to exerciſe ſhall be billetted by the order of the lieutenant, &c. who may alſo provide lodgings for non-commiſſioned officers, when not ſo called out.

His majeſty is authoriſed, in caſe of actual invaſion, or imminent danger thereof, (the occaſion being firſt communicated to parliament if ſitting, or declared in council, and notified by proclamation, if not ſitting,) to order the lieutenant, or deputy lieutenants, to embody the Supplementary Militia, within the county; to place them under the command of general officers, and to march them to any part of the kingdom; to incorporate them into the Militia of the county, or form them into a ſeparate regiment, battallion, or independent company, with a proper number of officers to command them; and during ſuch ſervice, they are ſubject to the laws provided againſt mutiny and deſertion.

No part of the Supplementary Militia ſhall be ordered out of *Great Britain*.

His Majeſty ſhall ſummon the parliament within fourteen

teen days after the order for embodying the Supplementary Militia.

Notices ſhall be given to the Militia men of the time and place of aſſembling, whenever his majeſty ſhall cauſe them to be embodied; and every Militia man abſenting himſelf after notice, or refuſing to march, ſhall be liable to puniſhment; and perſons harbouring them knowingly ſhall forfeit 5*l.*

The commanding officers of the Supplementary Militia are entitled to receive one guinea for the uſe of every private Militia man, who ſhall be called out and embodied; ſuch money to be laid out as the commanding officer ſhall think moſt advantageous to the Militia man, and he ſhall account for the ſame to ſuch Militia man before his diſcharge.

Officers and privates of the Supplementary Militia are entitled, during ſervice, to the ſame pay as the other regiments of foot; and non-commiſſioned officers and privates ſhall have the benefit of *Chelſea Hoſpital* equally with other regiments.

The lieutenants and deputy lieutenants are to deliver to the clerk of the peace on or before the 1ſt of *January* 1797, a certificate of the number of privates enrolled under the act, who ſhall lay the ſame before the Juſtices at the next ſeſſions; and ſuch Juſtices ſhall cauſe the ſum of fifteen pounds for each man omitted to be raiſed, to be levied annually as the poor rates are levied.

If any perſon choſen by ballot ſhall leave a family unable to ſupport themſelves, they ſhall have the following weekly allowance, *viz.* one ſhilling for every child born in wedlock, and under the age of ten years, and one ſhilling for the wife of ſuch Militia man, whether he ſhall or ſhall not have any child or children; ſuch allowances to be paid by the overſeers where ſuch Militia man ſhall dwell, with power to make a rate for that purpoſe.

The act of 26 *G. III. c.* 107. and other acts relating to the raiſing, embodying, calling out, or providing for families of Militia men called out, or to the paying, cloathing, or ſubſiſting the Militia, ſhall be applied in the execution of the preſent act.

The act to continue in force during the preſent war, and one calendar month after, and may be altered, varied, or repealed, during the preſent ſeſſion.

The

The following interesting CASE deserves preservation in our REPOSITORY.

The DUTCHESS *of* KINGSTON'S CASE.

A sentence of jactitation is not conclusive against an indictment of bigamy; for its validity may be impeached as having been obtained by fraud.

Elizabeth Chudleigh, daughter of colonel Thomas *Chudleigh*, of Chelsea College, was married to the honourable Augustus *John Hervey*, on the 4th of *August* 1744, at the parish-church of *Lainston* in the county of *Northampton*, as appears by the Register of that place. On the 9th of November 1768, she instituted a suit of *Jactitation* of marriage against Mr. Hervey, in the Consistory Court of the Bishop of London; and on the 10th of February 1769, sentence was pronounced that, "The "said Elizabeth *Chudleigh* was and now is a Spinster, and "from all matrimonial contracts and espousals with the "said John Augustus *Hervey*." On the 8th of March 1769, Miss *Chudleigh* was married by special licence from the archbishop of Canterbury, to *Evelyn Pierpoint*, duke of Kingston. And on the 9th of January 1755, an indictment of Polygamy was found at Hicks's Hall, "That "Elizabeth, the wife of Augustus John *Hervey*, Esquire, "of Hanover Square, in the county of Middlesex, being "then married, and then the wife of the said Augustus, "feloniously did marry and take to husband Evelyn Pier"point, duke of Kingston, the said Augustus John Her"vey being then alive, *&c.*"

On the 18th of May 1775, a writ of *Certiorari* was granted by Lord *Mansfield*, to remove the proceedings into the court of King's Bench; but this writ was superseded; and on the 11th of November 1776, another writ of *Certiorari*, signed "YORK" issued, to remove the proceedings before the king in parliament.

On the 15th of April 1776, a commission was directed to Henry, Earl *Bathurst*, Chancellor, appointing him Lord High Steward of Great Britain, and authorising him to try the said indictment. The Lords came on the same day from their own house into the court erected in Westminster Hall; and her Grace who had been admitted to bail, appearing at the bar, was desired to kneel, and in that posture she was arraigned by the Lord High Steward. The indictment was then read by the clerk of the Crown, to which the prisoner pleaded NOT GUILTY.

The Duchess of Kingston immediately submitted to the Court,

Court, That, as her ſuppoſed marriage with Mr. *Hervey*, was the ground of the preſent charge againſt her, the ſentence of the conſiſtory court, pronouncing her free from all matrimonial contracts and eſpouſals with him, remaining unreverſed and unimpeached, ought to be concluſive; and that no other evidence ought to be received or ſtated againſt her reſpecting ſuch pretended marriage.

The whole of the proceedings in the Eccleſiaſtical court, from the libel to the ſentence, were read; and the queſtion, Whether the ſentence was concluſive or not, was very elaborately argued by the counſel on each ſide.

The counſel for the Crown were Mr. Attorney General, Mr. Solicitor General, Mr. Dunning, and Dr. Harris: for the priſoner, Mr. Wallace, Mr. Mansfield, Dr. Calvert, and Dr. Wynne.

But the Lords ordered the trial to proceed, and, after a hearing of four days, pronounced the priſoner, *guilty*.

In conſequence of this verdict, ſeveral queſtions were ſubmitted to the conſideration of the *Twelve Judges*, and the following points were reſolved—

Firſt, that a ſentence of the Spiritual Court, againſt a marriage, in a ſuit for jactitation of marriage, is not concluſive evidence, ſo as to ſtop the counſel for the crown from proving the ſaid marriage in an indictment for Polygamy.

Secondly, That, admitting the ſentence to be concluſive upon ſuch indictment, the counſel for the Crown may be admitted to avoid the effect of ſuch ſentence, by proving the ſame to have been obtained by fraud or colluſion.

Thirdly, That by the *ſtat.* 1 *Ed.* VI. *c.* 12. *ſ.* 16, a peer convicted of a clergyable felony is entitled to his immediate diſcharge, without reading or burning in the hand or being liable to impriſonment by the 18 *Eliz. c.* 4. *ſ.* 3. And that this privilege given by the ſtatute being ſuch as may be enjoyed by a *Peereſs*, is by operation of law communicated to her, and puts her in the ſame ſituation as a *Peer*. The conſequence of which is, that a *Peereſs* convicted of a clergyable felony, praying the benefit of this ſtatute, is not only excuſed from capital puniſhment, but ought to be immediately diſcharged, without being burnt in the hand.—(See 5 *Ann. c* 6, and 19 *G III. c.* 74, *ſ.* 3—) The priſoner was cacordingly diſcharged.

A Peereſs convicted of clergyable felony ſhall be diſcharged without burning or impriſonment.

TRIAL *of* JOHN SELLERS *and* OTHERS, *for* MURDER.

JOHN SELLERS was indicted for the wilful murder of Thomas Yates, by ſhooting him with a piſtol, loaded with a leaden bullet, and Elizabeth Jones and Richard Footner, for being preſent, aiding, abetting, and aſſiſting.

Mr. Raine opened the proceedings *pro forma*; after which Mr. Conſt addreſſed the Jury in behalf of the proſecution, in a very impreſſive, but at the ſame time temperate manner. He deſcanted for ſome time on the heinouſneſs of the crime of murder, which the laws of this country, as well as thoſe of all civilized nations, conſtituted a capital offence, as well in acceſſaries as principals. He then ſtated the circumſtances which were to be produced in evidence, and obſerved, that though Sellers was the unfortunate inſtrument in this caſe, yet if it ſhould be proved that the other priſoners were aiding, abetting, or employing him for the purpoſe, the Jury would be under the neceſſity of finding them alſo guilty.

Juſtice Graham, a Police Magiſtrate, was the firſt evidence produced, who depoſed that he knew the priſoner, Elizabeth Jones, for ſeven or eight years, during which ſhe lived in the houſe of the late Mr. Richard Yates. He alſo knew the deceaſed Mr. Thomas Yates, who came to the houſe of Mr. Richard Yates, his grand-uncle, in Pimlico, three or four days before the deeaſe of the latter, and attended at his funeral. The deceaſed afterwards continued to live in the houſe, from the beginning of April till late in June, during which time he and the priſoner Jones appeared to be on friendly terms. Some time after this, Miſs Jones, thinking ſhe had ſome cauſe to be diſſatisfied at the deceaſed's remaining in the houſe, a meeting took place between the deceaſed, the priſoner, Mr. Beard, and himſelf. On this occaſion Mr. Beard told the priſoner that ſhe ſhould not trouble herſelf with attempting to ſend the deceaſed from the houſe, but leave it to the law to ſettle any diſpute between them. The witneſs joined in this advice, as the property of Mr. Yates being all perſonal, and 40*l.* a year, being left in his will to the deceaſed, it was impoſſible to tell who had beſt right to the houſe until the whole was determined. He alſo recommended to the deceaſed not to bring his wife to the houſe until a ſettlement took place, but this

advice

advice he thought proper to neglect, and his wife was after some time brought to be a resident in it.

On the 22d of August, about seven o'clock in the evening, and after the fatal accident, Mr. Beard called at the witness's office to acquaint him with it. They then repaired to the house and searched a bureau, where no testamentary papers were found; but Miss Jones previous to that time, had made her claim at Doctors'-Commons, to the property of old Mr. Yates.

The next witness called on the part of the prosecution, was Mary Thomson, servant to the deceased. She deposed, that the day the unfortunate affair took place, Mr. Yates dined about four o'clock, immediately after which she heard him go into the garden; at that time, Miss Jones came down stairs into the back kitchen and just peeped into the front kitchen; the witness asked her if she wanted her servant girl Fanny? to which she answered No. Miss Jones went to the back door, and then went again up stairs; the witness did not hear her do any thing to the door. Mr. Yates was walking in the garden towards the stone steps of the back door, when she heard Miss Jones come down a second time, and heard her go and shut the door, and likewise shut the window next the steps, by which a person might come into the house from the garden; the witness immediately heard a bustle in the passage, and one of the panes of the door break, and heard Mr. Yates call out as if he had been pushing at the door to get in: She ran out to the back kitchen, and found Mr Sellers and Mr. Footner running from the kitchen to the back garden door, and heard Miss Jones in the passage to the parlour; the witness then mounted the kitchen dresser to look out of the window into the garden, and saw Mr. Yates upon the stone steps, who ordered her to open the window that he might get in. Upon her opening the window, Mr. Yates came to it and attempted to get in; but he being a jolly man, and iron bars across the window, he stuck, and could not proceed farther. While her attention was engaged with Mr. Yates, she heard somebody come down stairs, and looking round she saw it was Mr. Sellers, with a pistol in his right hand: upon which she called out, "For God's sake don't shoot him—for God's sake don't let it off." Mr. Sellers said, "Mr. Yates, you must not come in;" and Mr. Yates immediately drew himself back. As he

was

was drawing himſelf back Mr. Sellers preſented the piſtol to him, which induced Mr. Yates to ſtretch out his right arm, as if he wiſhed to put it aſide with his hand; but he did not touch the piſtol: his hat being on his head ſtuck in the bars, the ſpace not being wide enough to let him quickly out. The witneſs here deſcribed the manner in which Mr. Sellers held the piſtol while he preſented it to Mr. Yates; but ſhe did not perceive his fingers move when the piſtol fired. Upon the piſtol going off Sellers exclaimed. "He an't hurt—he an't hurt." But Mr. Yates called out that he was wounded and murdered, and got out of the window, and went into the garden, and lay down upon his ſide. Sellers immediately ran out to the garden wall; and the witneſs ran out to give the alarm that her maſter was murdered. Footner opened the fore-parlour window, and told the people who had aſſembled by her cries, that ſhe was mad, and that there was nobody ſhot either in the houſe or the garden. Footner then left the window, and Sellers came out of the ſtreet door, which he ſhut after him: the witneſs immediately informed the people that he was the perſon who had murdered her maſter; at that inſtant a man laid hold of him, and Sellers ſaid he would deliver himſelf to any Juſtice or conſtable; but the perſon who ſeized him replied, that he thought in the preſent inſtance any man might act as a conſtable. When ſhe got into the houſe again ſhe ſaw Miſs Jones in the front parlour, and Mr. Footner in the back parlour. She went into the garden, where ſhe ſaw Mr. Yates lying; he took hold of her hand and deſired her to go for her miſtreſs—in going through the paſſage to the parlour ſhe found a hat which her maſter had on at the time, with a hole in it cloſe to the crown: ſhe likewiſe ſaw a cutlaſs in the cloſet.

Thomas Gouch called; remembers being in Stafford-place on the day of the murder—heard ſomebody hallooing out murder; ran to the place, and aſſiſted Mary Thomſon over the area, who called out that her maſter had been ſhot—ſaw Mr. Sellers coming out of the houſe; the girl ſaid this is the man who ſhot my maſter—ſaw one Jagger ſeize Sellers by the collar, who ſaid he was willing to go to any Juſtice. Mr. Footner opened the other window, and ſaid, that nobody had been ſhot in the houſe or garden; went and ſaw Mr. Yates lying in the garden, ſeveral people beſide him, and he pointed to Sellers, and ſaid, that is the raſcal who ſhot me.

Mr.

Mr. Brown a Surgeon who was called at the time, depoſed as to the wound, and ſaid it was mortal—aſked Sellers what the piſtol was loaded with? and he ſaid with ball.

Robert Jagger ſaid, he was a Maſon, and lives in Pimlico, related the manner of ſeizing Sellers. Footner had ſaid that he was ſorry he was in the houſe.

Mr. Cruikſhank was examined and deſcribed the wound.

Several other witneſſes were examined for the proſecution, whoſe evidence all tended to the ſame amount.

After the Jury were returned into court, Mr. Juſtice Rooke called upon the priſoners for their defence.

Mr. Sellers entered into a very long hiſtory of his conduct from the time of his being in the houſe till the deed was committed. He ſaid, he was put into the houſe by Mr. Beard, the Proctor, and other friends of Miſs Jones, to protect her againſt the violence of Mr. Yates. The conduct of Mr. Yates was in the higheſt degree aggravating, inſulting and impetuous. The reaſon why the door had been locked, was becauſe Mr. Yates had threatened to bring perſons into the houſe that day, to turn Miſs Jones out. The lawyers were expected to be at the houſe in the evening, to endeavour to compromiſe it, and it was intended only to keep out Mr. Yates till they came. When he ran down ſtairs with the loaded piſtol it was under the impulſe of the moment, he held it too near Mr. Yates, and Mr. Yates put his hand upon it, and it accidentally went off.

Miſs Jones likewiſe gave a long account of her conduct, with reſpect to Mr. Yates; ſhe ſaid it was againſt her knowledge piſtols were brought into the houſe, and when ſhe heard of it ſhe was much alarmed,

Mr. Footney's defence conſiſted of a denial of having acted with any malicious intention towards the deceaſed.

Dr. Pitcairn ſpoke to the general character of Miſs Jones, in terms highly in her favour.

Several witneſſes ſpoke to the character of Footney.

As to Mr. Sellers a number of moſt reſpectable people attended; and many who had known him, ſome 15, and others 20 and 25 years, depoſed, that his character was in every reſpect amiable; that he was of a mild benevolent and placid diſpoſition.

Mr. Juſtice Rooke, who tried the caſe, ſummed up the

evidence. He pointed out ſuch circumſtances as appeared in favour of and againſt the priſoners, with much clearneſs and preciſion. He lamented that pending a legal deciſion, the idea of blood, and death, or violence, ſhould be recurred to for the preſervation of property; the laws of the land, when reſorted to, would be found amply adequate to that end. He appeared of opinion, that under the peculiar circumſtances of the caſe, the priſoners Jones and Footney did not come clearly under the indictment—but of that the Jury were to judge.

With reſpect to Sellers the great point was that of his intention. Whether the firing was accidental, or the heat of blood and the impulſe of the moment; or whether from a malicious and premeditated deſign. A ſtrict ſurvey and conſideration of the evidence ſhould alſo influence the judgment on that point.

On this head his Lordſhip pointed out, with great force and ingenuity, ſeveral circumſtances which ſeemed to implicate his guilt, at the ſame time not omitting thoſe facts which might be conſidered as tending to his exculpation.

The Jury retired for a quarter of an hour, and when they returned, pronounced John Sellers, guilty of Manſlaughter, Elizabeth Jones Not Guilty, and Richard Footner Not Guilty.

Interesting Decision *reſpecting* Parcels *careleſsly left in a* Hackney Coach.

William Wynne's Case.

If a parcel be accidentally left in a Hackney coach, and the coachman, inſtead of reſtoring it to the owner, detains it, opens it, deſtroys part of its contents, and borrows money on

AT the Old Bailey, in April Seſſion, 1786, *William Wynne*, was indicted before Mr. Baron *Eyre*, for ſtealing a deal box, containing a quantity of wearing apparel and two bonds, the property of Francis *Welden*, Eſq.

The priſoner was a Hackney-Coachman, and was called from his ſtand to convey the proſecutor from *Oſborne's* Hotel, in the *Adelphi*, to No. 9, Orchard ſtreet, Portman-ſquare. Among ſeveral trunks and packages which were put into the coach, was the box mentioned in the indictment. On arriving at the houſe in Orchard ſtreet, the proſecutor took all the articles out of the coach except this box, which remained under one of the ſeats. The priſoner received his fare and drove away.

A

A few minutes after he was gone the box was miſſed, and every poſſible means were uſed that day to diſcover the coach; but without ſucceſs, hand-bills were diſperſed the enſuing morning, and advertiſements inſerted in the public prints, offering a reward to any perſon who ſhould bring home the box. Two days afterwards two perſons called at the proſecutor's houſe in Orchard ſtreet, and deſired to ſpeak with the gentleman who had loſt the box; but he not happening to be at home, they left the number of the coach in which it had been loſt, and the nick-name of the coachman. The very next morning as the proſecutor was going along *Holborn*, he diſcovered both the coach and coachman waiting at a door for his fare. The priſoner on perceiving him, immediately ſaid "Sir, I and my wife were at your houſe this very day "with the box, but I did not leave it, becauſe no perſon "was at home to pay the three guineas you offered for "finding it; and wanting money very much, I have car-"ried it to one Michael *Mitchel*, a Jew, who lives at "No. 5, New Caſtle Street, Whitechapel." The proſecutor and the priſoner went together immediately to the Jew's houſe. The Jew produced the box, but on examination it was found uncorded, with the haſps forced off; and two bonds, with the papers out of ſeveral pocket-books, were miſſing. The priſoner acknowledged that he had uncorded the box, and looked at ſome of the things, but denied having taken any of them away. He alſo acknowledged having borrowed eight ſhillings of the Jew's wife when he left the box that morning in her cuſtody. The priſoner accuſed the Jew of having burned the bonds: the Jew retorted the ſame charge upon the priſoner.

the reſt, he is guilty of felony.

The learned Judge obſerved, that as it appeared the priſoner had not originally taken poſſeſſion of the property himſelf, but that it had been thrown upon him by the negligence of the proſecutor, in leaving it behind him in the coach, no felonious intention could be ſuppoſed to exiſt in his mind at the moment the property was firſt acquired; and although the ſubſequent circumſtance of his keeping it till it was advertiſed was a breach of moral duty, it could not of itſelf be legally conſidered as a criminal converſion. He therefore directed the jury that if they thought the priſoner had detained the box merely in the hope and expectation that a reward would be of-

fered for its reſtoration, and that he meant then to return it to the right owner, they ought to acquit him; but, that, on the other hand, if they were in their conſciences perfectly ſatisfied that he had uncorded the box not merely from natural though idle curioſity, but with an intention to embezzle any part of its contents, it would become a matter of legal conſideration, whether a perſon ſo guilty ſhould not be reached as a felon?

The jury found the priſoner guilty; but the judgment was reſpited, and the caſe ſubmitted to the opinion of the Twelve Judges.

In the July ſeſſion following, the priſoner was put to the bar, and informed by the Recorder, that his caſe had been conſidered by the judges, and that they approved of the verdict the jury had given. He received ſentence of tranſportation for ſeven years.

This caſe will receive illuſtration from the following

Case *of* John Sears.

AT the Old Bailey, in January ſeſſion 1789, *John Sears* was indicted before Mr. Juſtice *Aſhhurſt*, for *ſtealing* a parcel of Callico, and other things, the property of Sarah *Dixon*. The proſecutrix hired the priſoner, who was a Hackney-coachman, to drive her from her houſe in Manchester-buildings to a Linen-draper's in Oxford Road, where ſhe purchaſed the articles named in the indictment. They were tied up in a parcel, and put into the coach. The priſoner drove back to Manchester-buildings, and the proſecutrix, on getting out of the coach, ordered him to give the parcel to her ſervant, but he neglected ſo to do, and drove *expeditiouſly* away. The things were advertiſed, and a reward offered to any perſon who ſhould reſtore them; but without effect. A few days afterwards the proſecutrix met the priſoner; but he denied all knowledge of her perſon, or of the things, or of his ever having had ſuch a fare. The goods, however, were traced to the priſoner's poſſeſſion, and the parcel had been opened. The priſoner, on his defence acknowledged that he had driven the proſecutrix from Manchester-buildings to the linen-draper's and back again, but he denied that ſhe ever deſired him to deliver the parcel to her ſervant. Upon this evidence he was convicted of *felony*, and

and received ſentence of impriſonment for ſix months, by virtue of the ſtatutes of 5 *Ann. c.* 6. and 19 *G. III, c.* 74, *ſ.* 3.

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27 *G. III. c.* 16. *An Act for granting to His Majeſty an additional Duty on Stage Coaches.*

28*th* DECEMBER 1796.

BY 27 *G. III. c.* 16, It is enacted, that, from and after the fifth day of *January* 1797, the owner of every coach, berlin, landau, chariot, calaſh, chaiſe marine, chaiſe, diligence, or other carriage, with four or more wheels, and of every calaſh, chaiſe, chair, or any other carriage with leſs than four wheels, by what name ſoever the ſame ſhall be called, to be employed as public ſtage coaches or carriages for the purpoſe of conveying paſſengers for hire to and from different places in the kingdom of *Great Britain*, ſhall be charged with an additional duty of one penny for every mile ſuch carriage ſhall travel.

From Jan. 5, 1797, the owner of every ſtage coach to pay an additional duty of 1d. for each mile.

And the duty by this act impoſed ſhall from time to time be paid, by ſuch perſons at ſuch time, in ſuch manner, and by ſuch ways and means, and under ſuch management, and ſubject to ſuch penalties and forfeitures, and with and ſubject to ſuch powers, rules, and directions, and by ſuch methods, and in ſuch manner and form, as are directed and preſcribed in an act, paſſed in the 25th of His preſent Majeſty: intituled, *An act for repealing the duties on licences taken out by perſons letting horſes for travelling poſt*, &c. or by any other act of parliament relating to the duties under the management of the commiſſioners for managing the duties upon ſtamped vellum, parchment, and paper; and that all the powers, authorities, rules, directions, proviſions, penalties, and forfeitures, mentioned in the ſaid acts, ſhall be in full force and effect with relation to the duty hereby impoſed, and the ſame ſhall be put in execution for the raiſing, levying, collecting and ſecuring, the duty hereby impoſed, *ſ.* 2.

Duty to be levied, &c. as ſtamp duties.

And all the monies ariſing from the ſaid duty hereby impoſed, (the neceſſary charges for raiſing and accounting for the ſame excepted) ſhall be paid into the receipt of

Duty to be paid into the exchequer, and

carried to the conſolidated fund, and deemed an addition to the Revenue for defraying the increaſed charge occaſioned by any loan of this ſeſſion.

of His Majeſty's exchequer, and made part of the conſolidated fund, *ſ.* 3.

Provided always, that the monies ariſing or to ariſe of the duty hereby impoſed, or ſo much thereof as ſhall be ſufficient, ſhall be deemed an addition made to the revenue, for the purpoſe of hefraying the increaſed charge occaſioned by any loan to be raiſed, or ſtock created or to be created by any act or acts paſſed, or to be paſſed in this ſeſſion of parliament; and that there ſhall be kept in the Office of the auditor of the ſaid receipt, during the ſaid period of ten years, a book in which all the monies ariſing from the ſaid duty hereby impoſed ſhall, together with the monies ariſing from any other rates and duties, granted in this ſeſſion of parliament for the purpoſe of defraying ſuch increaſed charge as aforeſaid, be entered ſeparate and apart from all other monies paid or payable to His Majeſty.

Goods *are in* Tranſitu *while the* Veſſel *is performing* Quarantine.

Court *of* King's Bench, *Wedneſday*, Jan. 28.

Holst *v.* Pownal *and* Another.

Mr. ERSKINE, on the part of the defendants, moved for a new trial.

This was an action of trover, brought by the plaintiff againſt the defendants, who were the Aſſignees of Dutton and Co. Bankrupts. The circumſtances were ſhortly theſe:

Dutton ordered a cargo of goods of Holſt, which were to be ſent to the port of Liverpool. Before this cargo arrived at that place, and while the ſhip was performing quarantine, the defendants took poſſeſſion of her. Dutton and Co. having, before that time, become bankrupts. Before the time for performing quarantine expired, the ſhipper of the goods ſent notice to the captain, not to deliver up the goods to Dutton and Co. or to any other perſon, but to keep them for him.

The Jury who tried this cauſe at Guildhall, found a verdict for the plaintiff, to the amount of the goods.

Mr.

Mr. Erſkine moved for a new trial, on the ground, the goods were not *in tranſitu*, but had arrived at the end of their voyage.

The lord Chief Juſtice was clearly of opinion, that this cargo could not be conſidered as having arrived at the end of the voyage, till after the expiration of the time for performing quarantine; and, as the ſhipper had given notice to the captain before that time, not to deliver the goods, they muſt be conſidered as being then *in tranſitu*.

His Lordſhip ſaid, the reſt of the Court were of the ſame opinion.

Mr. Juſtice Groſe obſerved, that the doctrine of ſtopping goods *in tranſitu*, had always been conſtrued favourably for the ſeller.

Mr. Erſkine ſaid, he had no doubt that theſe goods were *in tranſitu*, but his clients were deſirous of having the opinion of the Court on that point.

STOCK JOBBING.

SATURDAY, *December* 10.

The ASSIGNEES *of* KENTISH *v.* TWOGOOD.

THIS was an action brought by the Aſſignees of the Bankrupt againſt the defendant, in order to recover the penalties incurred by act of parliament, for making illegal contracts for ſtock, according to the price of the particular ſtock at a certain day. Ninety other actions, it appeared, depended on the trial of this.

The caſe was ſtated by Mr. Erſkine with his uſual ability, who deſcribed the pernicious effects of this deſtructive ſpecies of gambling, not only with reſpect to individuals, but to the public at large. He ſaid, the Bankrupt was a young man, who had engaged in this ſhameful ſpeculation, and had loſt conſiderable ſums of his creditors' money, which the aſſignees now ſought to recover, by obliging the defendant to pay the penalties attached to the offence by act of parliament. He had no doubt but he ſhould be able to bring the matter fully home to the defendant.

With

With this view the Bankrupt was brought forward, who proved his having entered into the contracts in queſtion, and having had conſiderable loſſes to ſeveral brokers.

Unfortunately, however, for the ends of juſtice, when thoſe brokers were brought forward, they appealed to the Court, whether they ſhould anſwer any queſtions, as their anſwers might criminate themſelves, the act of parliament impoſing a penalty on them, as well as on the other parties. After a long debate between the Counſel on this point, lord Kenyon decided, they were *not* bound to anſwer. He lamented very much that the ends of juſtice ſhould be thus defeated, but he could not admit of any evidence contrary to the principles of law. As to the act of parliament in queſtion, his lordſhip thought it required very much to be amended.

In conſequence of this determination the plaintiffs were *nonſuited*.

NOTE *given on a* GAMBLING CONSIDERATION.

GUILDHALL, WEDNESDAY, *Nov.* 30.

ROSS *v.* SPILLAR.

THIS was an action upon a promiſſory note for 14*l.* 7*s.*

Mr. Mingay ſaid, he had nothing more to ſay to the Jury than that he ſhould prove the note—which he accordingly ſubſtantiated by evidence.

Mr. Erſkine obſerved, that the learned gentleman had made a very ſhort ſpeech, and which he would anſwer by uſing the old maxim—"leaſt ſaid ſooneſt mended." It was true he had proved the note, but then he forgot to mention, that it was given for a *Gambling conſideration*, and in order to balance a running account between the parties reſpecting illegal Inſurance in the Lottery.

Mr. Erſkine in ſupport of his defence called one witneſs, who depoſed, that it was given to ſecure money loſt by Inſurance.—The plaintiff was of courſe—Nonſuited."

37 *G. III, c.* 18. *An Act for altering certain Rates of Poſtage for Conveyance of Letters in* England *and* Scotland *reſpectively, and of Packets to and from* Great Britain, *from and to* Portugal *and the* Britiſh *Colonies in* America *reſpectively, &c.*

December 28, 1796.

BY the 37 *G. III, c.* 18, it is enacted, That ſo much of an act, made in the 9 *An.* intituled, *An act for eſtabliſhing a general poſt office for all her Majeſty's dominions, &c.* and ſo much of an act, made in the 5 *G. III,* intituled, *An act to alter certain rates of poſtage; and to amend, explain, and enlarge, ſeveral proviſions in an act made in the* 9 *An. and in other acts relating to the revenue of the poſt office*; and alſo ſo much of another act, paſſed in the 24 *G. III,* intituled, *An act for granting to his Majeſty certain additional rates of poſtage for conveyance of letters and packets, by the poſt, &c.* eſtabliſhing certain rates or ſums for the port and conveyance of letters and packets, ſhall, from and after January 5, 1797, and the ſame are hereby repealed. *ſ.* 1.

From Jan. 5 1797, ſo much of 9 *An.* c. 10; 5 *G.* III, c. 25, and 24 *G.* III, ſeſſ. 2, c. 37, as eſtabliſhes certain rates of poſtage in *England, Wales,* and *Berwick upon Tweed,* repealed, and the following rates to be taken:

And from and after the ſaid 5th of January 1797, it ſhall be lawful for his Majeſty's poſtmaſter general, and his deputy and deputies, to and for the uſe of his Majeſty, to demand, have, receive and take, for the port and conveyance of all letters and packets which he ſhall convey, carry, or ſend poſt, within that part of the kingdom of *Great Britain* called *England,* according to the ſeveral rates and ſums herein after mentioned, the ſame being rated by the letter or by the ounce; that is to ſay,

Rates.

For the port and conveyance of every ſingle letter by the poſt, not exceeding fifteen meaſured miles from the office where ſuch letter may be put in, to the office where ſuch letter may be delivered, the ſum of three-pence; for every double letter ſixpence; for every treble letter nine-pence; and for every ounce in weight one ſhilling; and ſo in proportion for every other letter or packet of greater weight than an ounce:

For the conveyance of every ſingle letter above fifteen miles, and not exceeding thirty, the ſum of four-pence; for every double letter eight-pence; for every treble letter one ſhilling; and for every ounce in weight one ſhilling and four-pence; and ſo in proportion for every other letter or packet of greater weight.

For the conveyance of every ſingle letter above thirty miles, and not exceeding ſixty, five-pence; for every double letter ten-pence; for every treble letter one ſhilling and three-pence; and for every ounce one ſhilling and eight-pence; and ſo in proportion for every other letter or packet of greater weight.

For the conveyance of every ſingle letter above ſixty miles, and not exceeding one hundred, ſixpence; for every double letter one ſhilling; for every treble letter one ſhilling and ſixpence; and for every ounce two ſhillings; and ſo in proportion for every other letter or packet of greater weight.

For the conveyance of every ſingle letter one hundred miles, and not exceeding one hundred and fifty, ſeven-pence; for every double letter one ſhilling and two-pence; for every treble letter one ſhilling and nine-pence; and for every ounce in weight two ſhillings and four-pence; and ſo in proportion for every other letter of greater weight.

And for the conveyance of every ſingle letter of one hundred and fifty miles, or upwards, eight-pence; for every double letter one ſhilling and four-pence; for every treble letter two ſhillings; and for every ounce two ſhillings and eight-pence; and ſo in proportion for every other letter of greater weight. *ſ.* 2.

The following additional rates be taken for poſtage of letters in *Scotland*:

And it is enacted, That, from and after the 5th of January 1797, it ſhall be lawful for his Majeſty's poſtmaſter general, and his deputy and deputies, over and above the rates of poſtage now payable, to demand, have, receive, and take, for the conveyance of all letters and packets within *Scotland*, the additional rate of poſtage herein-after mentioned; *viz.*

Rates.

For the conveyance of every ſingle letter one penny; for every double letter two-pence; for every treble letter three-pence; and for every ounce four-pence; and ſo in proportion. *ſ.* 3.

Rates eſtabliſhed by firſt recited act to and from *Portugal*, and by the ſecond to and from *America*, repealed.

And ſo much of the ſaid act, made in the 9 *An.* as eſtabliſhes rates of poſtage for letters from and to *London*, to and from *Portugal*; and ſo much of the ſaid act, made in the 5 *G. III*, as eſtabliſhes rates of poſtage for letters from and to *London*, to and from the *Britiſh* dominions in *America*, ſhall, from the ſaid 5th of January 1797, be hereby repealed; and after the ſaid 5th of January 1797, it ſhall be lawful for his Majeſty's poſtmaſter-general,

general, and his deputy, for the uſe of his Majeſty, to demand, receive, and take, for the conveyance of all and every the letters, packets, and other things, which ſhall be conveyed from or to the kingdom of *Great Britain*, to or from the kingdom of *Portugal*, a packet poſtage according to the ſeveral rates herein-after mentioned; The following rates to be taken for letters to and from *Portugal*.

For all letters and packets, paſſing from any part of *Great Britain* to *Liſbon*, or to any other port in the kingdom of *Portugal*, and from any ſuch port into *Great Britain*; for every ſingle letter one ſhilling; for every double letter two ſhillings; for every treble letter three ſhillings; and for every ounce four ſhillings; and ſo in proportion. *ſ.* 4. Rates.

And after the 5th of January 1797, it ſhall be lawful for his Majeſty's poſtmaſter-general, and his deputy, to demand, and receive for the conveyance of all and every letters, packets, and other things, which ſhall be conveyed from or to the kingdom of Great *Britain*, to or from any port within the *Britiſh* dominions in *America*, a packet poſtage according to the ſeveral rates herein-after mentioned; *viz.* The following rates to be taken for letters to and from the *Britiſh* dominions in *America*.

For all letters and packets paſſing from any part of *Great Britain*, to any port within the *Britiſh* dominions in *America*, and from any ſuch port into *Great Britain*; for every ſingle letter one ſhilling; for every double letter two ſhillings; for every treble letter three ſhillings; and for every ounce four ſhillings; and ſo in proportion. *ſ.* 5. Rates.

And over and above the rates aforeſaid, all letters and packets paſſing to or from *Portugal*, from or to that part of *Great Britain* as aforeſaid, or to or from the *Britiſh* dominions in *America*, from or to that part of *Great Britain* called *England*, ſhall be charged with the full inland rate of poſtage hereby eſtabliſhed, according to the diſtance ſuch letters and packets ſhall be conveyed within *England*, the dominion of *Wales*, and the town of *Berwick upon Tweed*, and with the full inland rate of poſtage now payable, together with the additional rate of poſtage hereby eſtabliſhed, according to the diſtance ſuch letters and packets ſhall be conveyed within *Scotland*. *ſ.* 6. Letters to or from *Portugal* or *America* chargeable with the inland rates.

Provided always, That no letter or packet, together with the contents thereof, ſhall be rated at an higher rate of poſtage, according to the rates and duties hereby granted, than as a treble letter, unleſs the ſame ſhall be Mode of charging letters by weight.

one ounce in weight; and that all letters and packets of the weight of one ounce, ſhall be rated as four ſingle letters, and in proportion for every quarter of an ounce above the weight of an ounce, reckoning each quarter of an ounce as a ſingle letter. *ſ.* 7.

Act not to alter the charge of poſtage on ſingle letters from or to non-commiſſioned officers, &c. eſtabliſhed by 35 G. III. c. 53.

But nothing herein contained ſhall increaſe or alter the amount or manner of charging the rates of poſtage upon ſingle letters to be ſent by the poſt by or to non-commiſſioned officers, ſeamen, and privates, on their own private concerns, whilſt ſuch non-commiſſioned officers, ſeamen, and privates, ſhall be employed in his Majeſty's navy, army, militia, fencible regiments, artillery, and marines, made payable by an act paſſed in 35 *G. III*, intituled, *An act for further regulating the ſending and receiving letters free from the duty of poſtage*, &c. *ſ.* 8.

Proviſions of acts relating to the Poſt Office, not hereby repealed or altered, to continue in force.

And from and after the ſaid fifth of January 1797, all the clauſes, proviſions, powers, privileges, advantages, diſabilities, penalties, and methods, for the recovery of the ſame, and all other matters and things in force, at the time of paſſing this act, and contained in the ſaid act, made in the 9 *An.* or in any other act or acts of parliament, ſo far as the ſame relates to the Poſt Office, (and not repealed or altered by this act), ſhall continue in force, and ſhall be applied and extended, to this preſent act. *ſ.* 9.

And the ſeveral rates and duties herein before granted ſhall be paid, from time to time, into the hands of the receiver-general for the time being of the Poſt Office. *ſ.* 10.

The average annual revenue of the Poſt Office, for three years, ending April 5, 1795, which by 37 *G. III*, *c.* 35, has been increaſed, how to be applied. *ſ.* 11.

Perſons ſued may plead the general iſſue.

If any perſon ſhall at any time be ſued, moleſted, or proſecuted, for any thing by him done in purſuance of this act, or of any thing herein contained, ſuch perſon may plead the general iſſue, and give the ſpecial matter in evidence for his defence; and if upon trial a verdict ſhall paſs for the defendant, or the plaintiff ſhall become nonſuited, then ſuch defendant ſhall have treble coſts againſt ſuch plaintiff or plaintiffs. *ſ.* 12.

Treble coſts.

37 *G. III, c.* 19. *An Act for the more effectually securing the Stamp Duties on Indentures, Leaſes, Bonds, and other Deeds.*

December 28, 1796.

WHEREAS by an act, paſſed in 19 *G. III*, certain proviſions are made to prevent the revenue of ſtamps from being defrauded by the practice of inſerting in one ſkin of parchment more than the uſual quantity of words, which had been allowed to be after the rate of fifteen common law ſheets, containing ſeventy-two words in each ſheet; which proviſions have not been found effectual: and whereas it is expedient that the proviſions of the ſaid act ſhould be repealed, and other proviſions made for more effectually ſecuring the ſaid duties, &c. it is therefore enacted, That from and after the 5th of January 1797, the number of ſtamps required to be put on every ſkin or piece of vellum or parchment, or ſheet or piece of paper, upon which any indenture, leaſe, bond, or other deed ſhall be engroſſed, printed, or written, ſhall be calculated according to the number of common law ſheets engroſſed, printed, or written thereon, each common law ſheet containing ſeventy-two words, in manner following; that is to ſay, Where the quantity of words engroſſed, printed, or written, on any ſkin or piece of vellum or parchment, or ſheet or piece of paper, ſhall not exceed fifteen ſuch common law ſheets, one ſtamp; and where the quantity or number of words engroſſed, printed, or written thereon, ſhall amount unto thirty ſuch common law ſheets, two ſtamps; and ſo progreſſively one further ſtamp for every fifteen common law ſheets above the number of thirty ſuch common law ſheets contained therein: provided, That if the number of words engroſſed, &c. thereon, ſhall, after calculating in manner aforeſaid every amount of fifteen common law ſheets contained therein, exceed the number of ſuch common law ſheets ſo calculated by a leſs quantity of words than other fifteen ſuch common law ſheets, no further ſtamp ſhall be required for ſuch exceſs above the number of common law ſheets ſo calculated; and that in every ſuch caſe the ſtamps required to to be put on any ſuch ſkin, &c. on which any indenture, leaſe, bond, or other deed ſhall be engroſſed, printed, or written, ſhall be of the ſame value or denomination reſpectively, and ſhall be ſuch ſtamps which have been or ſhall be

19 G. III. c. 66, recited.

From Jan. 5, 1797, the number of ſtamps for any indenture, &c. to be calculated in the manner herein ſpecified.

be provided or directed to be uſed to denote the duties payable on ſuch indenture, leaſe, bond, or other deed, according to the laws now in force, or hereafter to be in force. *ſ.* 1.

Schedules to be deemed part of indentures, &c.

And every ſchedule or other inſtrument annexed unto any indenture, leaſe, bond, or other deed and indorſement made thereon, ſhall, in eſtimating the number of ſtamps required by virtue of this act to be put thereon, be deemed as part of ſuch indenture, leaſe, bond, or other deed; and the number of words contained therein ſhall be calculated as if the ſame were contained in ſuch indenture, leaſe, bond, &c. *ſ.* 2.

Any perſon not bringing indentures not duly ſtampt, to forfeit 20*l.*

If any attorney, ſolicitor, clerk, officer, or other perſon, ſhall engroſs, print, or write, or cauſe to be engroſſed, printed, or written, any indenture, leaſe, bond, or other deed, on vellum, parchment, or paper, not duly ſtamped according to the directions of this act, and ſhall neglect to bring the ſame to be duly ſtamped in the manner and within the time hereby directed and allowed for ſtamping the ſame, every ſuch perſon ſhall forfeit twenty pounds; and no ſuch indenture, leaſe, &c. ſhall be pleaded or given in evidence, or be good, uſeful, or available, in any manner whatever, unleſs ſtamped as required by this act. *ſ.* 3.

No indenture available unleſs duly ſtampt.

Blank indentures, &c. which have been ſtampt, but not according to this act, may be properly ſtampt within a limited time.

It is further enacted, That every indenture, leaſe, bond, or other deed, which ſhall have been ſtamped with one ſtamp on every ſkin or piece of vellum or parchment, or on every ſheet or piece of ſuch paper, before any thing ſhall have been engroſſed, printed, or written thereon, and ſhall not be ſtamped as by this act is directed, which ſhall be brought at any time before the execution thereof, or within the ſpace of one calender month after the date thereof, to the head office of the commiſſioners for managing the duties on ſtamped vellum, parchment, and paper, may be ſtamped as this act requires, on payment of the duty for the ſame; and that, upon bringing any indenture, leaſe, bond, or other deed, to be ſtamped as aforeſaid, the officer appointed by the ſaid commiſſioners ſhall calculate the duty payable thereon, and the number of ſtamps required by this act to be put thereon, and ſhall write in words at length upon the margent of each ſkin, &c. whereon the ſame ſhall be engroſſed, printed, or written, the number of common law ſheets contained therein, and the day on which ſuch payment ſhall be made, and ſhall ſubſcribe his name thereto; and

Officer to calculate the duty on indentures, &c. and write on them certain particulars.

in

in case the duty shall be so paid at the said head office, then the indenture, lease, bond, or other deed, so brought to be stamped, shall, on payment of the said duty, be stamped with such number of stamps as the case shall require; and in case the duty shall be so paid at any other office to be appointed by the said commissioners, the indenture, lease, bond, or other deed, whereon the duty so payable, and the number of Words so contained therein shall have been calculated and written, shall be transmitted within the space of twenty-one days from the day of payment of such duty to the head office to be stamped, and the same shall be stamped accordingly with such number of stamps as the case shall require; and if the person paying such duty at any such office to be appointed as aforesaid, shall be desirous that the same shall be transmitted to the said head office by the officer to whom such duty shall be paid, and shall leave the same with such officer for such purpose, such officer shall, upon request, sign and deliver an acknowledgement that such indenture, lease, bond, or other deed, has been left with him for such purpose, and shall transmit such indenture, lease, bond, or other deed, to the said head office to be stamped as aforesaid, and the same shall be returned to such officer as soon as conveniently may be after the stamping thereof, and such officer shall deliver back the same to the person entitled thereto, upon re-delivery to him of the acknowledgement which he shall have given for the same, if any shall have been given. *s.* 4.

On payment of duty at the head office, indentures, &c. to be stampt; and at other offices, indentures, &c. to be transmitted to the head office within 21 days for that purpose.

Officer receiving duty to acknowledge receipt of indentures, &c. for transmission, &c.

Provided always, That it shall be lawful to carry any such indenture, lease, bond, or other deed, at any time within six calendar months after the date thereof, to the said head office to be stamped in like manner, paying the duty for the same, and also the further sum of ten pounds by way of penalty, and also to carry the same to the said head office to be stamped in like manner at any time after the expiration of the said six months, on payment of the duty for the same, and also the further sum of ten pounds for every skin, or piece of vellum, parchment, &c. whereon such indenture, lease, bond, or other deed or matter or thing aforesaid, shall be engrossed, printed, or written, by way of penalty for not having before caused the same to be duly stamped according to the directions of this act. *s.* 5.

Indentures, &c. may be stampt at the head office at any time, on payment of the duty and a penalty.

Provided

In actions brought for engroſſing indentures, &c. contrary to this act, and not brought to be ſtampt within a month after date, the plaintiff to recover though afterwards ſtampt.

Provided always, That where an action ſhall be commenced againſt any perſon for engroſſing, printing, or writing, any indenture, &c. contrary to the directions of of this act, which ſhall be brought to the ſaid head office to be ſtamped within one calender month after the date thereof, and ſuch action ſhall be proſecuted with effect, the ſame ſhall not be delayed, prejudiced, defeated, or barred, by reaſon of the payment of any duty or penalty on ſtamping the ſame, or of the ſame being ſtamped after the commencement of ſuch action, but the plaintiff therein ſhall be entitled to recover as if ſuch duty and penalty had not been paid, or ſuch ſtamp had not been put thereon after the commencement of ſuch action. *ſ.* 6.

Penalty of 100*l.* for adding to indenture, &c. after the duty has been calculated, and before ſtampt, &c.

And if any perſon ſhall add any word in any ſuch indenture, &c. after the officer to be appointed by the ſaid commiſſioners ſhall have calculated the duty payable thereon, and before it ſhall be duly ſtamped, according to the directions of this act, or ſhall alter any word or letter in any writing hereby required to be made, by the officer to be appointed by the ſaid commiſſioners, on the margent of ſuch indenture, &c. after ſuch officer ſhall have ſigned the ſame according to the directions of this act, or ſhall knowingly utter or publiſh as true any ſuch indenture, &c. with ſuch word added thereto, or any ſuch altered writing, with intent to defraud his Majeſty, or any other perſon, then every perſon ſo adding, altering, uttering, or publiſhing as aforeſaid, ſhall forfeit one hundred pounds. *ſ.* 7.

All acts relating to ſtamp-duties, not hereby altered, are to be applied by this act. *ſ.* 8.

Application and recovery of penalties fued for in four months.

And one moiety of all pecuniary penalties and forfeitures hereby impoſed ſhall, if ſued for within four calendar months from the time of their being incurred, be to his Majeſty, and the other moiety, with full coſts, to him who ſhall inform or ſue for the ſame within the time aforeſaid; and which may be ſued for in his Majeſty's court of exchequer at *Weſtminſter*, for offences committed in *England*, or in his Majeſty's court of exchequer in *Scotland*, for offences committed in *Scotland*, by action of debt, bill, plaint, or information, wherein no eſſoin, privilege, wager of law, nor more than one imparlance ſhall be allowed; but nevertheleſs it ſhall be lawful for his Majeſty's attorney general in *England*, or his Majeſty's

Where penalties ap-

advocate in *Scotland*, in case it shall appear to his satisfaction that any such penalty or forfeiture was incurred without any intention of fraud, to stay all further proceedings, by entering a *noli prosequi*, or otherwise, with respect as well to the share of such penalty or forfeiture claimed by such informer or informers, as to the share thereof belonging to his Majesty. *s.* 9.

pears to have been incurred without fraud, proceedings may be stopt.

Provided always, That in default of prosecution within the time herein-before limited, no such penalty or forfeiture shall be afterwards recoverable, except in the name of his Majesty's attorney-general in *England*, and of his Majesty's advocate in *Scotland*, by information in the courts of exchequer in *England* and *Scotland* respectively; and in every case where such information shall be prosecuted as aforesaid, the whole of such penalty or forfeiture shall belong to his Majesty; and that all penalties and forfeitures, and shares of penalties and forfeitures, incurred as aforesaid, belonging to his Majesty, shall be paid into the hands of his Majesty's receiver-general of stamp duties for the time being, any law, usage, or custom, to the contrary notwithstanding; and that, in any case where the whole of such penalties or forfeitures shall be recovered, to the use of his Majesty, it shall be lawful for the said commissioners to cause such reward as they shall think fit, not exceeding one moiety of the penalties or forfeitures so recovered, after deducting all charges and expences incurred in recovering the same, to be paid thereout, to or amongst any person or persons who shall appear to them entitled thereto, as informers, in respect of such penalties or forfeitures so recovered; any thing herein contained to the contrary notwithstanding. *s.* 10.

Recovery and application of penalties, not sued for in 4 months.

Penalties to his Majesty to be paid to the receiver general of stamp duties.

Informers may be rewarded out of penalties to his Majesty.

It is further enacted, That so much of the said act passed in the 19 *G. III*, as relates to the engrossing, printing, or writing, on any skin of vellum or parchment, or sheet or piece of paper, any indenture, lease, bond, or other deed, or to any of the matters for which provision is made by this act, is hereby repealed. *s.* 12.

Recited act in part repealed.

Evidence.

THE Mutiny Act enables two juſtices to take the examination of a ſoldier reſpecting his ſettlement, and directs them to give an atteſted copy of it to the ſoldier, to be by him delivered to the commanding officer, in order to be produced when required, and makes ſuch atteſted copy evidence. But it was determined, in *the K.* v. *Clayton le Moore*, that no other atteſted copy of the original examination, than that given to the ſoldier, is evidence.

The original examination itſelf is, however, admiſſible evidence, as well as the atteſted copy.—This was decided in the caſe of *the K.* v. *the Inhabitants of Warley*, *Hil. Ter.* 36 *G. III*, which was as follows: Two juſtices, by an order, removed the wife and children of a ſoldier in one of the regiments of foot, and now reſiding with his regiment in *Ireland*, from the townſhip of *Warley* to the townſhip of *Halifax*, both in the weſt-riding of *Yorkſhire*. On an appeal to the ſeſſions, the reſpondents, in order to prove the ſettlement of the ſoldier to be at *Halifax*, produced and offered to the court in evidence *the original examination* of the ſoldier, touching his legal ſettlement, taken before two juſtices, purſuant to the ſtatute directing the ſame; and they alſo offered evidence to prove, that, ſoon after taking the examination, an atteſted copy thereof was delivered by the ſaid two juſtices to the ſoldier, which atteſted copy was by him delivered to his commanding officer, who certified the ſame at the foot of the ſaid original, and that ſuch atteſted copy was at the head quarters of the regiment in *Ireland*. But the counſel for the appellants contended, that though by the ſtatute the atteſted copy of a private ſoldier's examination, taken before two juſtices, reſpecting his ſettlement, was made evidence of his ſettlement, yet the original examination was not thereby made evidence, and therefore the ſame was inadmiſſible and ought to be rejected: and the court being of that opinion, rejected the ſame, and diſcharged the order of removal, ſubject to the opinion of the court, whether the evidence above-mentioned was legally rejected or not—if the evidence was admiſſible, the appeal to be ſent back to the ſeſſions to be heard out—By lord *Kenyon*, Ch. J. The caſe ſtates that the examination was taken purſuant to the ſtatute; and the only queſtion reſerved for our opinion,

is whether or not the original examination be evidence. On that queſtion it is impoſſible to doubt. The propoſition now attempted to be ſupported, is that the atteſted copy is of more weight than the original examination: but it is fair to conclude that the legiſlature, when they made the inferior ſpecies of writing, evidence, alſo intended to make the ſuperior ſpecies, evidence. *Groſe*, J. concurred; and the court ordered the caſe to be ſent back to the ſeſſions to be reheard.

Frauds.

TO ſuſtain an indictment for a fraud at common law, there muſt either have been ſome falſe token uſed by the party, in order to effectuate his fraudulent intent, ſuch as common prudence could not be ſufficient to guard againſt; or the fraud muſt be of a publick nature, and not a mere private concern between the parties. Therefore, in the caſe of the *K.* v. *Lara*, *Hil.* 36 *G. III*, an indictment at common law, charging, that the defendant, deceitfully intending, by crafty means and devices, to obtain poſſeſſion of certain goods, the property of the proſecutor, pretended that he wanted to purchaſe them for a valuable conſideration, and *delivered to the proſecutor a fictitious order for the payment of money, purporting to be a draft upon a banker; for the amount of which he knew he had no authority to draw*, and that it would not be paid, by virtue of which, he obtained poſſeſſion of the goods and defrauded the proſecutor of the value; was held by the court to be inſupportable.—For by lord *Kenyon*, Ch. J. the true boundary between thoſe frauds that are, and thoſe that are not, indictable at common law, is clearly eſtabliſhed. *There muſt either be a falſe token or a conſpiracy:* now in this caſe, where is the falſe token, or what was uſed by the defendant to gain credit beyond his aſſertion? *he ſat down and drew a check on a banker*; but it would be ridiculous to call that a falſe token; that left his credit juſt where it was before; what the defendant did was immoral and highly reprehenſible; but as he uſed no falſe token to accompliſh his deceit, the judgement muſt be arreſted.—*Groſe*, J. The diſtinction taken by Hawkins is plain. What conſtitutes a fraud.

Speaking of frauds, he ſays, "it is an indictable offence to defraud another of his known right by means of ſome artful device; but that the deceitful receiving of money from one man to another's uſe, upon falſe pretence of having a meſſage and order to that purpoſe, is not puniſhable by a criminal proſecution, becauſe it is accompanied with no manner of artful contrivance, but wholly depends on a bare naked lie." In this caſe, in order to make ſomething more than a bare naked lie, it is ſaid, that the defendant uſed a falſe token, for that he gave a check on his banker: but that was only adding another lie. If we were to determine that this was indictable, I do not know how to draw the line; for it might probably be ſaid, that every perſon who overdrew his banker, uſed a falſe token, and might be indicted for it.—*Lawrence*, J. It is admitted, that a mere falſe aſſertion, unaccompanied by a recommendation, is not indictable; and I think there is nothing in this caſe beyond the defendant's own falſe aſſertion. 6 *Durnf. & Eaſt.* 565.

ASSAULT *and* FALSE IMPRISONMENT.

COURT OF COMMON PLEAS. GUILDHALL.

Tueſday, December 6.

ROBINSON *v.* FINNEY *and Four* OTHERS.

THIS was an action to recover from the defendants, a ſatisfaction in damages for an aſſault and falſe impriſonment.

Mr. Serjeant Adair opened the caſe on the part of the plaintiff. He ſaid the preſent action was of importance to the liberty of the ſubject, and eſpecially to thoſe gentlemen who were fond of the ſport of ſhooting.

It appeared in evidence, that the plaintiff, on the 8th of October laſt, in company with ſeveral others, was amuſing himſelf with partridge ſhooting; the defendants accoſted them, and demanded to know whether they had a certificate; Robinſon ſaid he had, but did not produce any; after ſome altercation, the defendant Finney and his brother, without any warrant, took the plaintiff into cuſtody, and after cutting the waiſtband of his breeches, and tying his hands behind him, conveyed him before a magiſtrate, where he was confined for about eight hours.

It

It appeared that they cut the plaintiff's breeches in uniformity to the practice recommended by an old country juſtice to prevent eſcape.

After a long trial, in the courſe of which it appeared that the plaintiff and his companions were unqualified to ſhoot, and that the defendants had acted from a miſtaken notion of the law, the jury found a verdict for the plaintiff —Damages 100*l.* againſt the two Finneys only, who were the acting perſons.

FORESTALLING CATTLE.

WILLIAMS *v.* HANDCOCK.

THIS was an action upon the ſtatute to recover from the defendant a penalty for foreſtalling cattle.

The counſel for the plaintiff, in opening this cauſe, pointed out the enormity of the offence, and the wiſdom of the law in enacting penalties for the puniſhment of it.

The penalty by the ſtatute, is double the ſum for which the beaſts are ſold.

Several witneſſes were called, who proved to the jury, that the defendant had been guilty of foreſtalling two beaſts, and that they were ſold for 45*l.*

The jury, in obedience to the ſtatute found a verdict againſt the defendant for the ſum of 90*l.*

CRIM. CON.

Monday, December 12, 1796.

MACAULEY *v.* HALE.

THIS was an action for criminal converſation. The plaintiff was a poor man, a carpenter; and the defendant, a gentleman of fortune, with a wife and family, and reſided at Highgate, where the plaintiff worked for him about the repairs of his houſe, and ſuch other jobs as were required. The defendant, as was ſtated, obtained opportunities of being with the plaintiff's wife, by employing her as a laundreſs.

It appeared, from the teſtimony of the plaintiff's evidence, that Macauley ſuſpecting an intimacy to ſubſiſt between his wife and the defendant, concealed himſelf in a cellar, in which there was a hole that looked into the parlour, where the parties were diſcovered in the very act of adultery.

When

When the plaintiff's witneſſes were croſs-examined, which they were with great ſtrictneſs by Meſſrs. Erſkine, Gibbs, and Garrow, their evidence appeared in a very unfavourable light.

Mr. Erſkine entered upon the defence. He ſtated, that the whole was a fabrication, calculated to pick the pocket of the defendant. He deſcribed the plaintiff's wife as a deformed woman, the very likeneſs of ſin and death, that ſhe had made advances to the defendant, which he had very properly reſiſted. In ſhort, that nothing was ever farther from his intentions than to connect himſelf with ſuch an infamous woman.

Several witneſſes were produced for the defendant, by whom it clearly appeared, that the whole charge was a foul conſpiracy, entered into by the plaintiff and his wife, with the aſſiſtance of their witneſſes, to obtain money of the defendant, and injure his character.

Lord Kenyon expreſſed his marked diſapprobation of this action, and the motives which had induced the plaintiff to bring it; he did not think it was by any means ſupported by the evidence. In conſequence of which, a verdict was pronounced in favour of the defendant.

AN IMPORTANT TRIAL.

COURT OF KING'S BENCH.

Friday, December 2.

HORE *v.* MONTEETH.

THE plaintiff, who keeps a cold-bath in the Strand, was going to Aſcot-Heath races in a ſingle-horſe chaiſe; when he reached Piccadilly one of the horſe's ſhoes became looſe, and he took him to the ſhop of the defendant to have it faſtened—four nails were driven in.—The plaintiff aſked what was to pay, and he was told *6d.* to the maſter for the job, and $3\frac{1}{2}d$ for his men. The plaintiff offered *6d.* which the defendant woul dnot accept, but detained the horſe for the $3\frac{1}{2}d$. The plaintiff therefore brought this action, to recover the loſs occaſioned by his horſe being detained for a conſiderable time.

The counſel for the defendant informed the court, that the defence was that $9\frac{1}{2}d$. was the uſual charge to an accidental cuſtomer; but Lord Kenyon would not hear any evidence. He thought it was a very unreaſonable demand in the farrier—*6d.* was quite ſufficient. The jury gave the plaintiff *5l.* damages.

PROPERTY

PROPERTY LIABLE TO BE RATED.

AS ſtock in trade is rateable if its value can be aſcertained, and it be productive of profit, the circumſtance of its having been rated one year, and paid for by the parties aſſeſſed without appeal, is *prima facie* evidence that it is profitable; and if any of the perſons who have been ſo aſſeſſed, wiſh to diſcharge themſelves from the payment of a future aſſeſſment, they muſt, upon an appeal to the ſeſſions, expreſsly ſhew by evidence, that they ought not to be rated, although thereby they may be put to the ſevere neceſſity of diſcloſing their circumſtances. This was decided in the caſe of the *K.* v. *Inhabitants of Darlingtoa, Mich. Term, 36 G. III,* which was as follows: certain perſons appealed to the ſeſſions againſt a poor rate made for *Darlington*, becauſe ſeven perſons were not rated for their ſtock in trade: the ſeſſions quaſhed the rate, and ſtated a caſe for the opinion of the court thus: "It did not appear whether ſtock in trade had or had not been rated in *Darlington* prior to 1745: from 1746 to 1752 it had; and again from 1788 to 1794 it had been rated; in the rate for the year 1794, ſeven perſons were rated for their ſtock in trade as yielding certain profits, (ſtating them) againſt which rate thoſe perſons did not appeal; this, the appellants contended, was an admiſſion, that, at that time, thoſe ſeven perſons poſſeſſed ſtock in trade producing the profits there ſtated. This rate was paid by ſome of thoſe ſeven perſons, but not by others; to enforce payment from whom no ſteps had been taken: the appellants then proved, that two of thoſe ſeven perſons, in January 1795, when another rate was made, kept ſhops in *Darlington*, and each poſſeſſed a viſible ſtock in trade there, and that they appeared to carry on buſineſs there to the ſame extent as in 1794." The Seſſions concluded their ſtatement of the fact thus: "The circumſtances of the ability of thoſe two perſons, (naming them) and the other five, or that they reſpectively made profit of their ſtock in trade, or that it was excluſive of their debts, or that it was a clear reſidue after debts paid, did not appear *otherwiſe than as herein-before ſtated.*" By Lord *Kenyon*, Ch. J. Here the juſtices have drawn the concluſion that the ſtock was productive; they have indeed added to the caſe, that it did not appear to them that the ſtock was productive,

productive, *otherwiſe than as herein-before ſtated*: but then it becomes material to ſee what is before ſtated; *it is ſtated, that theſe perſons had large viſible ſtock in trade, that in the preceding year they were rated for that ſtock, and that they ſubmitted to the rate, for "whether paid or not at the time, is immaterial, no appeal having been made againſt the rate;"* then their circumſtances not being altered, the queſtion is, whether all this was not *prima facie* evidence for the juſtices to proceed upon, and whether, as this evidence was not oppoſed by evidence on the other ſide, it was not ſufficient to enable them to draw the concluſion which they have drawn. Undoubtedly it was ſtrong *prima facie* evidence againſt the perſons rated. I feel indeed the ſeverity of compelling perſons in trade to make a diſcloſure of their circumſtances; but this is not a ſingular caſe: perſons appointed ſheriffs in ſome corporations, being ſometimes obliged to diſcloſe their ſituation in order to excuſe themſelves ſerving the office. In this caſe ſome evidence was before the juſtices in ſupport of the rate; it was competent to decide on the weight of it: they have decided; and we cannot now ſay, that the concluſion they drew was certainly wrong. *Groſe*, J. there is no doubt that, generally ſpeaking, ſtock in trade is rateable: under what circumſtances indeed it is rateable is another queſtion; and in ſome caſes is a queſtion of conſiderable difficulty. Here then was evidence to a certain degree that the ſtock in queſtion was productive; the owners were rated for it the preceding year: that rate was not appealed againſt, and their ſituation does not appear to be altered; and as this evidence was not contradicted by other evidence, we cannot ſay that the juſtices did wrong in thinking it to be ſufficient evidence for the purpoſe for which it was adduced. *Lawrence*, J. declared himſelf to be of the ſame opinion. Order of ſeſſions confirmed. 6 *Term Rep.* 468. *Durnf. & Eaſt.* 468.

Game.

No partridge to be killed or uſed between Feb. 12, and Sep. 14.

BY 36 *G. III, c.* 39, ſo much of the act 2 *G. III, c.* 19, as relates to the deſtroying any partridge before Sept. 1, in any year, ſhall be repealed. *ſ.* 1.

And no perſon ſhall, on any pretence whatſoever, take, kill, deſtroy, carry, ſell, buy, or have in his poſſeſſion, or uſe

uſe any gun, dog, ſnare, or other engine, with intent to kill any partridge, between Feb. 12, and Sept. 14, under the penalty of 5*l.*

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37 *G. III. c.* 22, *An Act to explain and amend an Act, made in this preſent Seſſion of Parliament, intituled, An Act for providing an Augmentation to the Militia, to be trained and exerciſed in the Manner therein directed, and for enabling His Majeſty to cauſe the ſame to be embodied, in Caſe of Neceſſity, for the Defence of theſe Kingdoms.*

[30*th* DECEMBER 1796.]

Preamble, reciting act of preſent ſeſſion Cap. 3.

WHEREAS it is expedient that an act, paſſed in the preſent ſeſſion of parliament, intituled, *an act for providing an augmentation to the militia, &c. in the manner therein directed, &c.* ſhould be explained and amended, in the particulars after mentioned: it is therefore enacted,

Juſtices may carry the ſaid act into execution, as any other relating to the militia.

that the juſtices of the peace for any county, riding, diviſion, or place, within their reſpective juriſdictions, ſhall have full power and authority, to carry the ſaid act into execution, in the like manner and as effectually as they are authorized to carry into execution an act paſſed 26 *G. III*, intituled, *an act for amending and reducing into one act of parliament, the laws relating to the militia in* England or any other act relating to the militia; and that

Where deputy lieutenants are empowered to act by the recited or this act, a juſtice and deputy lieutenant may act.

in all caſes where deputy lieutenants are empowered by the ſaid act paſſed in the preſent ſeſſion of parliament, or this act, to act in the execution thereof at any ſubdiviſion meeting, any juſtice of the ſame county, &c. together with one deputy lieutenant, may execute the ſeveral matters required at ſuch meeting, as effectually as *two* or more deputy lieutenants of ſuch county, &c. *ſ.* 1.

Men not to be required to ſwear they are proteſtants, certain words omitted in the oath.

And ſo much of the ſaid act of the preſent ſeſſion as requires every perſon, previouſly to his being enrolled, or permitted to ſerve, in the ſupplementary militia, to ſwear that he is a proteſtant, is hereby repealed; and the perſon authorized to adminiſter the oath preſcribed by the ſaid act is hereby required in every caſe in adminiſtering the ſame, to omit the following words, *videlicet:* 'And I do ſwear, that I am a proteſtant.' *ſ.* 2.

Where the 26 *G. III.* has not been put into execution, &c.

Where the 26 *G. III, c.* 107, has not been put into execution, becauſe a return of men liable to be balloted has not been made, or where duplicates of ſuch liſts have not been made out, the powers of the act of the preſent

ſeſſion may be executed at any meeting after the paſſing of this act, in ſuch manner that the ſupplementary militia may be raiſed without delay. The deputy lieutenants, &c. may proceed on returns already made, or where none are made, &c. may order freſh ones to be made out; and where exemptions have been erroneouſly allowed, may amend liſts, and direct freſh ballots to be taken. Lieutenants, deputy lieutenants, and juſtices who have omitted to act, or have acted erroneouſly, are indemnified. *ſ.* 3.

In actions brought againſt perſons hereby indemnified.

In caſe any action, or ſuit, ſhall, after the paſſing of this act, be brought againſt any perſon hereby meant to be indemnified on account of any penalty or damages incurred for any act done in purſuance of this act, ſuch perſon may plead the general iſſue, and upon their defence give this act and the ſpecial matter in evidence upon any trial to be had thereupon. *ſ.* 4.

If by *Jan.* 30, 1797, a ſufficient number of officers ſhall not be appointed, the lieutenant, &c. may appoint perſons deſcribed in the act of the preſent ſeſſion.

If in any county, &c. a ſufficient number of officers, qualified according to the ſaid acts, ſhall not be appointed to commiſſions in the ſupplementary militia to be raiſed for the ſaid county, &c. on or before *January* 30, 1797, the lieutenant and deputy lieutenants reſpectively, are hereby required, as ſoon as conveniently may be, to appoint a ſufficient number of ſuch other perſons, as are deſcribed in the ſaid act of the preſent ſeſſion, to be officers in the ſaid ſupplementary militia, ſubject to the approbation of his majeſty, and in the manner therein directed. *ſ.* 5.

If it ſhall appear before *Jan.* 15, 1797, that a ſufficient number of non-commiſſioned officers, &c. cannot be ſpared from the militia, to train the ſupplementary militia, *Chelſea* penſioners may be appointed, &c. deficiencies

If it ſhall appear to the lieutenant, or any three or more deputy lieutenants, at any time before 15th *January* 1797, that a ſufficient number of non-commiſſioned officers, drummers, or private men, cannot conveniently be ſpared from the regiment, battalion, or company of militia ſerving for any county, &c. to train and exerciſe the ſaid ſupplementary militia to be raiſed by virtue of the ſaid act of the preſent ſeſſion, for ſuch county, &c. the lieutenant and deputy lieutenants reſpectively, are hereby required to appoint, for that purpoſe, ſuch number of men from and among the perſons put or to be put on the eſtabliſhment of *Chelſea* hoſpital, as ſhall be certified to him or them, by the ſecretary at war for the time being, to be fit and proper perſons for ſuch ſervice; and any deficiency of non-commiſſioned officers, drummers, or privates, remaining after ſuch appointments, may be ſupplied by any perſons who ſhall have ſerved as

non-

non-commiſſioned officers, drummers, or privates, in his Majeſty's army, or in the militia, and have been diſcharged therefrom, or ſuch other perſons as the ſaid lieutenant and deputy lieutenants reſpectively ſhall judge to be proper for that ſervice and ſhall appoint; and any perſon ſo appointed ſhall be entitled to the ſame pay during ſuch ſervice as non-commiſſioned officers, drummers, and private men, ſerving in the ſupplementary militia, would be entitled to by virtue of ſuch appointment according to the ſaid act, over and above any other pay, emolument, or allowance, to which they or any of them may be reſpectively entitled. *ſ.* 6.

Still remaining may be ſupplied by perſons diſcharged from the army, militia, *&c.*

The powers given by the ſaid act of the preſent ſeſſion to the lieutenant and deputy lieutenants, &c. to quarter and billet the ſupplementary militia to be raiſed by virtue of the ſaid act, ſhall not reſtrain juſtices, mayors, bailiffs, conſtables, tythingmen, headboroughs, &c. from billetting the ſaid ſupplementary militia; but all ſuch magiſtrates may, within their reſpective juriſdictions, quarter and billet the ſaid ſupplementary militia, and provide lodgings for the non-commiſſioned officers of ſuch militia, under and according to the powers and directions given by the ſaid act of 26 *G. III. ſ.* 7.

Powers given to lieutenants, *&c.* to quarter the ſupplementary militia, not to reſtrain juſtices, *&c.* from billetting them.

And it is further enacted, That no perſon who ſhall be ballotted to ſerve in the ſaid ſupplementary militia, and who ſhall forfeit and pay the penalty of 15*l.* preſcribed by the ſaid act, for neglecting to ſerve or to provide a ſubſtitute, ſhall be liable to be ballotted for again, either for the militia raiſed by virtue of the ſaid act of 26 *G. III*, or by any other act, or for the ſaid ſupplementary militia, for five years. *ſ.* 8.

Perſons allotted paying 15*l.* for not ſerving or providing a ſubſtitute not liable to be ballotted for again for the militia for 5 years.

No perſon choſen by ballot to ſerve in the ſaid ſupplementary militia, nor any ſubſtitute, being of the height of five feet two inches, ſhall be deemed unfit for ſervice, or be liable to be diſcharged, by reaſon that he is under the height required by the 26 *G. III. ſ.* 9.

Perſons choſen.

Nothing contained in the ſaid act of the preſent ſeſſion, ſhall be conſtrued to empower any overſeer of the poor to provide any volunteer for the ſaid ſupplementary militia, without the conſent of the inhabitants of the pariſh, tything, or place, to be obtained in the manner directed by 26 *G. III*, *ſ.* 10.

Act not to empower any overſeer to provide volunteers.

Any perſon may offer himſelf to ſerve as a ſubſtitute in the ſaid ſupplementary militia, for any ſubdiviſion, and appear before any deputy lieutenant or juſtice, within ſuch

Subſtitutes may offer themſelves.

time and at ſuch place as is provided for the enrolling volunteers under the ſaid act of the preſent ſeſſion; and in every ſuch caſe, a correct liſt ſhall then and there be made of the names and places of abode of all ſuch perſons ſo appearing, who ſhall be approved of according to the proviſions of the ſaid act, and ſuch perſons, ſo approved, ſhall be accepted as ſubſtitutes for ſuch ſubdiviſion. *ſ.* 11.

Overſeers may give ſubſtitutes ſuch ſum as ſhall be fixed by the ſubdiviſion Meeting.

And it ſhall be lawful for the overſeer or overſeers of any pariſh, &c. within the ſubdiviſion for which ſuch perſons ſhall have offered ſo to ſerve as ſubſtitutes, (according to the order in which the ſaid pariſh, &c. ſhall ſtand upon the liſt prepared for the ballot), to give any ſuch perſons (according to the order in which their names ſhall have been entered in the liſt), any ſuch ſum as ſhall be deemed reaſonable, and ſhall be fixed by the deputy lieutenants, or any two or more of them, or one deputy lieutenant and one juſtice, at any ſubdiviſion meeting after the paſſing of this act, after they ſhall have been ſworn and enrolled to ſerve ſubſtitutes for ſuch pariſh, &c. in the ſaid ſupplementary militia, in manner as directed in the ſaid act; and it ſhall be lawful for ſuch overſeers to reimburſe themſelves out of any monies of the rates then raiſed, or to be reimburſed out of any monies thereafter to be raiſed for the relief of the poor, in ſuch manner as they may reimburſe themſelves, or be reimburſed for any monies by them expended in matters relating to the poor. *ſ.* 12.

Not liable to be choſen by ballot to ſerve in any other militia.

No perſon enrolled in the ſaid ſupplementary militia ſhall, during his ſervice therein, according to the directions of the ſaid act of the preſent ſeſſion, be liable to be choſen by ballot to ſerve in the militia raiſed or to be raiſed by virtue of 26 *G. III*, or any other act relating to the militia. *ſ.* 13.

Subdiviſion meeting may fix the ſums to be paid for volunteers.

The deputy lieutenants, or two or more of them, or one deputy lieutenant and one juſtice, at any ſubdiviſion meeting after the paſſing of this act, may fix the average current price then paid, or which in their judgement ſhall be a reaſonable ſum to be paid for a volunteer in the ſaid ſupplementary militia; and in every caſe where any perſon falling within the circumſtances provided for by the 26 *G. III*, ſhall claim to be entitled to one half of the current price then paid for a volunteer, ſuch price ſhall, in all caſes relating to the ſaid ſupplementary militia, be aſcertained by the average current price then fixed by the

ſaid

ſaid deputy lieutenants or juſtices reſpectively, to be paid for volunteers in the ſaid ſupplementary militia, and not according to the directions contained in the 26 *G. III*; one moiety of which price to be paid to ſuch perſon by ſuch churchwardens or overſeers, at ſuch times, and in ſuch manner, and under ſuch regulations, in all reſpects, except as to the amount thereof as aforeſaid, as are provided by the 26 *G. III. ſ.* 14.

In any place where the numbers appointed to be raiſed by the act of the preſent ſeſſion, with thoſe ſerving in the militia, ſhall amount to more than a certain proportion, the lieutenant to tranſmit an account of the number liable to ſerve under 26 *Geo.* III, cap. 107, to the privy council, who ſhall fix the number of ſupplementary militia, and if leſs than the number appointed by the act of the preſent ſeſſion, the ſurplus ſhall be diſcharged, &c.

It is further enacted, that if in any county, riding, or place, for which any men are to be raiſed for the ſaid ſupplementary militia, the numbers appointed to be raiſed by the ſaid act of the preſent ſeſſion ſhall, together with the numbers ſerving in the militia for the ſame county, &c. raiſed by virtue of the ſaid act of 26 *G. III*, amount in the whole to more than the proportion herein-after mentioned within ſuch county, &c. it ſhall be lawful for the lieutenant of the ſame to tranſmit to his majeſty's privy council an account in writing of the true ſtate of the number of perſons liable to ſerve under the ſaid 26 *G. III*, on receipt of which his majeſty's privy council ſhall forthwith fix and ſettle, as nearly as may be, the number of the ſupplementary militia who ſhall ſerve for ſuch county, &c. ſo as not to exceed, together with the numbers ſerving in the militia raiſed under the authority of the ſaid act of 26 *G. III*, the proportion of one for every ſix of the whole number of perſons returned by the lieutenant as liable to ſerve under the ſaid act of 26 *G. III*, and where the number of ſupplementary militia men, ſo fixed by his majeſty's privy council, ſhall be leſs than the number of ſuch militia men who are by the ſaid act of the preſent ſeſſion of parliament appointed to ſerve for any county, &c. then the general meeting of lieutenancy for ſuch county, &c. aſſembled for that purpoſe, in caſe the ſaid ſupplementary militia ſhall have been raiſed for ſuch county, &c. ſhall diſcharge, by ballot, proportionally out of each reſpective hundred, rape, lath, wapentake, or other diviſion, ſo many militia men as ſhall exceed the number ſo fixed and ſettled; and in caſe the ſaid ſupplementary militia ſhall not have been raiſed for ſuch county, riding, or place, then the ſaid general meeting of lieutenancy ſhall make an apportionment of the number of men to be raiſed in each hundred, rape, lath, wapentake, or diviſion, within ſuch county, riding, or place, according to the number of men ſo fixed

fixed and ſettled by his majeſty's privy council as aforeſaid; and the deputy lieutenants of the reſpective ſubdiviſions within ſuch county, riding, or place, ſhall ballot for ſuch number of men only as ſhall be ſo fixed and ſettled as aforeſaid. *ſ.* 15.

Men to ſerve for Birmingham.

As ſoon as a return of the number of men liable to ſerve for Birmingham is made to the privy council, they ſhall fix the number to ſerve, in a certain proportion to the number contained in the returns. *ſ.* 16.

Officers how paid.

Officers, clerks, &c. employed in the execution of this act, to receive ſuch rewards as the quarter ſeſſions ſhall judge proper, payable out of the county rates. *ſ.* 17.

Proviſions of 24 *G.* II, c. 44, to extend to lieutenants and deputy lieutenants.

And it is further enacted, that the proviſions of an act of 24 *G. II*, intituled, *an act for the rendering juſtices more ſafe in the execution of their office, and for indemnifying conſtables and others acting in obedience to their warrants*, ſhall extend to all his majeſty's lieutenants, and to all deputy lieutenants, acting in the execution of this act, or the ſaid act of the preſent ſeſſion, as fully and effectually as the ſame extend to juſtices acting in the execution of their office. *ſ.* 18.

No order or conviction to be removed.

And no order or conviction made by any lieutenant of any county, or by any two or more deputy lieutenants, or by any one deputy lieutenant, together with any one juſtice, or by any juſtice or juſtices by virtue of the ſaid act of the preſent ſeſſion, or this act, ſhall be removed by *certiorari* out of the county, or place, wherein ſuch order or conviction was made, into any court whatſoever; and no writ of *certiorari* ſhall ſuperſede execution or other proceedings upon any ſuch order or conviction ſo made in purſuance of the ſaid act of the preſent ſeſſion, or of this act. *ſ.* 19.

The proviſions of this and recited act of the preſent ſeſſion, to be uſed in execution of either.

And all and every the proviſions of this act ſhall, in the execution of the ſaid act paſſed in the preſent ſeſſion of parliament, be uſed and applied, and conſtrued, in like manner as if the ſame proviſions were ſpecially enacted in the ſaid act; and all and every the proviſions of the ſaid act ſhall, in the execution of this act, be uſed, applied, extended, and conſtrued, in like manner as if the ſame proviſions were ſpecially enacted in this act. *ſ.* 20.

Act may be altered this ſeſſion.

Provided, that this act may be altered, or varied, by any act to be made in this ſeſſion of parliament. *ſ.* 21.

DOCTORS

DOCTORS COMMONS.

February 2, 1796.

DANTON *v.* CLARKE JERVOISE.

THIS cauſe came on to be heard in the Conſiſtory Court, before Sir William Scott, Knt.

The complainant, Madame Danton, lives in Panton-ſquare, and procures her livelihood by keeping a *Table d'Hote*, which is reſorted to by perſons of the firſt conſideration and faſhion.

The Gentleman againſt whom this complaint was preferred, is Mr. Jervoiſe Clarke Jervoiſe, the ſon of the Member of Parliament.

It appeared that this Gentleman called at Madame Danton's, previous to her dinner hour, and the cloth being laid, and plates placed in readineſs upon the table, he turned ſix of them upſide down, and went away, by which it was underſtood that ſix perſons were to be brought to dinner by him. Mr. Clarke Jervoiſe returned again at the dinner hour, bringing with him only two perſons, Lord Scarborough and a Foreign Nobleman.

After dinner, the bill being called, it appeared that dinner for ſix was charged, though only three perſons had actually dined. Mr. Jervoiſe at firſt reſiſted the payment; but the lady inſiſting on the charge, it was at length paid; not, however, without much complaint from Mr. Jervoiſe, who, in his reflections on the tranſaction, it was ſtated, called Madame Danton by ſome of thoſe opprobrious epithets which it is the province of the Eccleſiaſtical Court to take cognizance of.

It was for uſing theſe epithets that the complaint was preferred, the penalty for which offence, we underſtand to be, *ſtanding for a certain number of hours in a white ſheet, at church, in the hours of worſhip.*

Dr. Swabey and Dr. Coote, on the part of the complainant, examined ſeveral witneſſes, and exerted their eminent abilities in proof of the allegations.

Dr. Batten, on behalf of Mr. Jervoiſe, contended, that the caſe was by no means made out, the witneſſes not having proved ſufficient to ground a conviction of his Client.

Lord Scarborough, in his examination, ſaid he was not certain as to the words uſed by Mr. Jervoiſe.

Sir

Sir William Scott ſaid he was ſorry an affair of this ſort ſhould be brought into a public Court. He recommended Mr. Jervoiſe to make a ſuitable apology to Madame Danton, and gave him until the next Court Day for the purpoſe.

We underſtand Mr. Jervoiſe denies having uſed the words; and, in conſequence, refuſes all ſort of compromiſe.

N. B. This matter, however, was afterwards accommodated, and it is ſaid the gentleman paid fifty pounds for attempting to ſully the fair fame of the lady.

COURT OF KING'S BENCH.

Saturday, Feb. 11.

LIBEL.

The King *v.* Smith.

Mr. LAW moved the judgment of the Court on John Smith, who ſtood convicted of publiſhing a ſcandalous and ſeditious libel, entitled, a Summary of the Duties of Citizenſhip.

Mr. Juſtice Aſhurſt addreſſed the Priſoner, and in an impreſſive manner pointed out the enormity of the offence, in diſſeminating principles which tended to undermine all order, all law, all government, and all religion, and which implicated in their operation the lives of thouſands. He confuted the aſſertion made on a former day by the priſoner, as to the ſtate of Clerkenwell Priſon; and pronounced the Judgment of the Court, which ſentenced him to be impriſoned and kept to hard labour in the Houſe of Correction at Clerkenwell for the ſpace of two years, and at the expiration thereof to enter into recognizance of 1000l. for his good behaviour for five years.

Smith ſaid, that his ſentence would to him be a ſentence of death.

Lord Kenyon commented on the ſtate of Clerkenwell Priſon, and ſaid, that the only evil which required a remedy, was the too much indulgence the priſoners were treated with.

37 *G. III. c. 32, An Act to ſuſpend, for a limited Time, the Operation of Two Acts of the Fifteenth and Seventeenth Years of the Reign of His preſent Majeſty, for reſtraining the Negociation of Promiſſory Notes, and Inland Bills of Exchange, under a limited Sum, within that Part of Great Britain called England.*

[10*th* MARCH, 1797]

WHEREAS an act of parliament was paſſed 15 *G. III.* intituled *An Act to reſtrain the Negociation of Promiſſory Notes, and Inland Bills of Exchange, under a limited Sum, within that Part of Great Britain called England*: And whereas another act was paſſed 17 *G. III.* intituled *An Act for further reſtraining the Negociation of Promiſſory Notes, and Inland Bills of Enchange, under a limited Sum, within that Part of Great Britain called England*: And whereas it is expedient, that the ſaid acts ſhould be ſuſpended for a certain time, ſo far as the ſame may relate to any notes, draughts, or undertakings, made payable on demand; be it therefore enacted that the ſaid recited acts, ſo far as they relate to the making void of promiſſory notes, or draughts, or undertakings in writing, payable on demand to the bearer thereof, for any ſum leſs than five pounds in the whole; and alſo to reſtrain the publiſhing or uttering and negociating of any ſuch notes, draughts, or undertakings as aforeſaid, ſhall, from and after March 2, 1797, be, and the ſame is hereby declared to be, ſuſpended until the firſt day of May next. *ſ.* 1.

Preamble.

15 *G. III.* c. 51, and

17 *G. III.* c. 30, recited.

Recited acts ſuſpended till May 1, 1797.

Provided always, that this act may be altered, varied, or repealed, by any act or act to be made in this preſent ſeſſion of parliament. *ſ.* 2.

Act may be altered or repealed.

And be it further enacted, that if any perſon liable to the payment of any of ſuch notes, draughts, or undertakings in writing, as may be iſſued in purſuance of this act, ſhall neglect to make full payment in money of the ſum or ſums for which ſuch notes, draughts, or undertakings in writing, ſhall be reſpectively given or iſſued, or ſo much thereof as ſhall be or remain due thereon reſpectively, by the ſpace of three days after demand thereof made by the holder of ſuch notes, draughts, or undertakings in writing, it ſhall be lawful for any one or more of his majeſty's juſtices of the peace for the county, &c. where the perſon reſpectively ſo refuſing to pay any of

If notes are not paid within three days after demand, a juſtice may order payment with coſts; and on neglect may cauſe it to be levied by diſtreſs.

ſuch notes, draughts, or undertakings in writing, as laſt aforeſaid, ſhall or may happen to be or reſide, and ſuch juſtice is hereby required, upon complaint made by the holder thereof to ſummon the perſon againſt whom ſuch complaint ſhall be made, and after his appearance, or in default thereof, upon due proof upon oath, of ſuch ſummons or warning having been given, ſuch juſtice ſhall proceed to hear and determine the ſaid complaint, and award ſuch ſum to be paid by the perſon reſpectively liable to the payment of every ſuch note, draught, or undertaking in writing, to the holder thereof, as ſhall appear to ſuch juſtice to be due thereon, together with ſuch a ſum for coſts, not exceeding twenty ſhillings, as to ſuch juſtice ſhall ſeem meet; and if any perſon ſhall refuſe or neglect to pay ſuch ſum of money as upon ſuch complaint ſhall be adjudged, upon the ſame being demanded, ſuch juſtice ſhall, by his warrant, cauſe the ſame to be levied by diſtreſs and ſale of the goods of the party ſo neglecting or refuſing, together with all coſts and charges attending ſuch diſtreſs and ſale, returning the overplus to the owner. *ſ.* 3.

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37 *G. III. c.* 28. *An Act to remove Doubts reſpecting Promiſſory Notes of the Governor and Company of the Bank of England for Payment of Sums of Money under Five Pounds.*

[3*d* MARCH, 1797.]

Preamble, WHEREAS it is expedient for the convenience of commercial circulation, that the governor and company of the bank of England ſhould iſſue promiſſory notes, payable to bearer, for ſums of money under five pounds; now, to avoid any doubt concerning the validity thereof,

All notes iſſued by the bank, after March 2, 1797, under 5*l.* ſhall be valid. be it enacted, that all promiſſory notes, and other notes for payment of money, which, ſince March 2, 1797, have been, or which hereafter ſhall be iſſued by the governor and company of the bank of England, payable to bearer, notwithſtanding the ſame ſhall have been, or ſhall be, made and iſſued for the payment of any ſum of money under five pounds, ſhall be good and valid in the law, to all intents and purpoſes, in like manner as if the ſame had been made and iſſued for the ſum of five pounds, or upwards;

wards; any law, ſtatute, or uſage, to the contrary thereof in anywiſe notwithſtanding. *ſ.* 1.

And be it further enacted, that no perſon concerned, or who has acted in, or who ſhall or may be concerned or act in, the making, uttering, publiſhing, or negociating, ſuch notes, ſhall be liable to any penalty or forfeiture whatſoever in reſpect thereof. *ſ.* 2. No perſon making ſuch notes liable to penalty.

And it ſhall be lawful to alter, vary, or repeal, this act, or any part thereof, in this preſent ſeſſion of parliament. *ſ.* 3.

IN THE MARSHALSEA COURT.

A ſingular Trial reſpecting the PUBLICANS *of* LONDON.

BREACH OF AGREEMENT.

THIS Cauſe originated from a regulation adopted by a great body of reſpectable Publicans, who, upon mature conſideration, agreed not to leave *pewter* pots at any of the houſes or dwellings of their cuſtomers, under the penalty of *three pounds*. This agreement was allowed by the Court, and by the Counſel on both ſides, to be binding upon the parties who had ſigned the deed; and therefore the Counſel for the defendant contrived to defeat the effect of it by *legal ſubtleties*.

Mr. Conſt, for the plaintiffs, opened the pleadings. He ſtated the great loſſes that this reſpectable body of tradeſmen ſuffered from peculations of their property; and that the number of convictions for pot-ſtealing exceeded all the other Grand Larcenies collectively; that they had applied to Parliament; but that the Houſe of Commons had given a decided opinion that the Publicans themſelves were fully competent to remedy the evil complained of. The defendant had ſigned the agreement; and Mr. Conſt ſaid, he could produce ſufficient proof that he had violated the conditions. It was not the paltry ſum of *three pounds* that influenced the plaintiffs; but it was an honeſt deſire to benefit the Public, and the Trade, which ſuſtained a loſs of many *thouſand pounds* annually.

Mr. William Brown was called. He produced the original deed, which he depoſed was ſigned, after being read over, by the defendant, without any reſervation whatever, on the 12th of July, 1796.

Mr. Laws, for the defendant, croſs-examined Mr. Brown, when it appeared that a great number of names were added after the ſignature of the defendant. Mr. Laws took a legal objection, namely, that it was not an agreement with conſent of all the ſubſcribing parties. After a long argument the Court over-ruled this objection, inaſmuch as marriage ſettlements, certificates of bankrupts, deeds, of compoſition, &c. &c. were continually ſigned in the ſame manner, and were always held to be legal.

He took ſeveral other technical objections, which were deemed by the Court to be *trivial.*

The croſs-examination of Mr. Brown was reſumed, when it appeared, that the defendant ſigned the agreement in expectation that the OTHER PUBLICANS *would accede to it*, and by that means make it a *general* concern. Here Mr. Laws, with a promptitude of legal avidity, ſeized the opportunity to contend that the agreement was only *conditional*; namely, IF ALL *the publicans concurred*, it was binding: if on the contrary any of them refuſed, it was NOT binding. In the preſent inſtance, out of *two thouſand* who reſided in the diſtrict where the defendant had affixed his ſignature, *eighteen hundred and eleven had ſigned.*

Upon this legal *ſubtlety*, (as we mentioned in the beginning), a great cauſe, which concerns the property of many thouſand reputable tradeſmen, was for the *preſent* determined. The plaintiffs were obliged to ſuffer a nonſuit.

COURT OF KING'S BENCH.

SITTINGS AFTER TERM.

Tueſday, Feb. 14.

TRIAL OF CROSSLEY THE ATTORNEY.

GEORGE CROSSLEY was indicted for wilful and corrupt perjury, in an affidavit ſworn in the Court of King's Bench, in a matter before the court reſpecting a tranſaction between the ſaid George Croſsley, Mr. William Brierley, and Mr. William Clarke.

In order to underſtand this tranſaction, it is neceſſary to ſtate, that at the time the forgery was diſcovered of the

the will of the late Mr. Henry Lewes, of Hygar, in Monmouthſhire, in which Sir John Briggs, Bart. and others, were ſaid to be implicated, a warrant was iſſued againſt Mr. Croſsley to ſeize his papers, in order to obtain evidence reſpecting the forgery. When that ſearch was made, a blank ſheet of paper was found with a treble ſixpenny ſtamp for affidavits; and the name of Brierley, as a Maſter Extraordinary in Chancery, was ſigned, and alſo of William Clarke. Mr. Croſsley was, of courſe, called upon to ſhew how ſuch a paper came into his poſſeſſion; and upon ſhewing cauſe in a motion made againſt him, he ſwore that it had been in his cuſtody ſeven years or more, and that he had received it along with ſome other papers, in a cauſe in which he was employed. He alſo denied a certain converſation, ſtated to have taken place between him and Mr. Stokes, concerning this paper; and it was on this affidavit the proſecution was commenced.

After the caſe had been opened by Mr. Adair, Mr. Stokes, above-mentioned, was called, who proved the taking poſſeſſion of the paper in queſtion, as well as ſome letters from Mr. Clarke to Mr. Croſsley, (which letters were read, and diſcloſed a complete ſcene of villainy), that Croſsley deſired him not to take the paper away, as it would be the ruin of Brierley and Clarke.

The affidavit of Mr. Croſsley, and the different rules of court, were proved by the proper officers. It was proved by the perſons from the Stamp Office, that the ſtamp was affixed only in March 1791.

Mr. Erſkine made a moſt admirable and ingenious ſpeech in behalf of the defendant; the principal ground of which was, that the affidavit had been altered ſince it was ſworn, by eraſing "verily believes," and inſerting the word "faith." To prove this defence, he called a Mr. Hill, a perſon who had been long acquainted with Priddle, Clarke, and Croſsley, who poſitively ſwore, that when Mr. Croſsley depoſed to the affidavit having no eraſure, and that where an eraſure now appeared, and the words "verily believes," were wrote the word "faith" was in the original; he likewiſe ſwore, that Mr. Gibbs's brief was a copy of it in its original ſtate. Mr. Erſkine and Mr. Gibbs were ſworn, and corroborated that part reſpecting the brief having the words "verily believes."

Mr.

Mr. Adair entered into a very long and able reply, in which his object was to ſhew that the alteration, if any had been made, muſt have been done by the contrivance of the defendant, as Mr. Stokes had ſworn that the inſtant Mr. Croſsley took it, it was delivered to the proper officer. He made ſome remarks tending to invalidate the teſtimony of Mr. Hill, on account of the perſons with whom he had been connected.

Lord Kenyon ſummed up with great perſpicuity, pointing out the object for the more immediate attention of the jury. If they believed the evidence of Hill, it was their duty to acquit; but he deſired them to contraſt his character with that of Mr. Stokes, and ſee which was moſt entitled to credit; the one had been brought up in bad company, and a man was generally known by his company; the other there was not the ſlighteſt imputation againſt. Upon the whole, he recommended the jury to conſider that it was of great importance that an innocent man ſhould not ſuffer, nor a guilty one eſcape; he therefore hoped they would weigh all the circumſtances with the credibility due to the witneſſes on either ſide, and pronounce a verdict accordingly.

The jury in about a quarter of an hour brought the defendant in *guilty*.

He was remanded to Newgate.

Thurſday, March 2

BOTHAM *v.* RAILTON.

THIS was an action brought by Mr. Peter Botham, an eminent merchant, againſt the defendant, for defamation and ſlander.

It appeared from the ſtatement of Mr. Erſkine, that the plaintiff, a gentleman of great reſpectability, in conſequence of being in the habit of receiving money from a Mr. Dent, of Canterbury, on account of the exciſe duties, had three perſons for ſecurities for what he ſo received; that he had a ſum of upwards of 2000l. in his poſſeſſion in October laſt, for which he had given a bill in the uſual manner; that the defendant, who was intimately acquainted with the plaintiff, went to Mr. Arnold, one of the ſecurities, and ſaid he had been inſpecting the books of the plaintiff, and he had ſeen a black liſt that appeared

peared to be 10,000l. deficient; he further ſaid, he was ſorry he had ever lived under the roof of ſuch a ſcoundrel; that, in conſequence of this information, Mr. Arnold went to the counting-houſe of the plaintiff, in the Old Jewry, where, from a partial examination of the books, and without ſeeing the caſh-book, he formed the ſame opinion. Mr. Erſkine contended, that Mr. Railton having taken upon him to miſrepreſent the affairs of the plaintiff, without having had the proper means of examining whether his ſtatement was true or falſe, was liable to all the conſequences which followed; the conſequences were, that the ſolicitor of the exciſe iſſued an extent againſt Mr. Botham, the plaintiff, and his creditors hearing of it, came upon him, in conſequence of which he was obliged to ſtop for a time, but that having really property, he was now riſing again. Mr. Erſkine addreſſed the jury very forcibly upon the impropriety of the defendant's conduct, and called upon them for exemplary damages.

Mr. Dent proved the money to have been in the plaintiff's hands, and that the bill he gave for it was not duly paid, and that an extent had iſſued; this was done in conſequence of a letter he received from London, and a converſation with the defendant and ſecurity reſpecting the plaintiff's inſolvency.

Mr. Arnold was about being examined, as to the converſation he had had with the defendant, and the words alledged to have been ſpoken, but Lord Kenyon ſaid he could not allow the confidence repoſed by one man in another to be betrayed in a court of juſtice. He thought that parties had a right to communicate their ſuſpicions one to another, and he did not think the plaintiff could proceed: he, however, recommended a juror to be withdrawn, which was done accordingly.

ACHISON *v.* BAKER.

Breach of Promiſe of Marriage.

THIS was an action to recover from the defendant, a widow lady, near ſeventy years of age, a compenſation in damages for a breach of promiſe of marriage.

It appeared in evidence, that the defendant had promiſed to marry the plaintiff, who is between ſixty and ſeventy years of age, within a reaſonable time after the death

death of her father. Her father died, and the plaintiff called upon her to perform her promiſe, which ſhe refuſed to do. The plaintiff, in expectation of marrying the defendant, who is a lady of conſiderable fortune, had given up buſineſs.

The defence to this action was, that the plaintiff was afflicted with an offenſive diſorder in his breaſt, at the time he called upon the defendant to fulfil her promiſe, and that the complaint juſtified her refuſing to marry him.

The jury withdrew for a ſhort time, and on their return, found a verdict for the plaintiff—damages 4000l.

COURT OF COMMON PLEAS.

Saturday, February 25.

HUNTER AND OTHERS *v.* PARKER AND OTHERS.

THIS was an action of importance to the trading world.

It was brought by the plaintiffs, as aſſignees of Francis Lauderlay, to recover from the defendants, who were pawnbrokers of conſiderable eminence, the value of a quantity of goods, which had been pledged by the bankrupt with the defendant, after he had committed an act of bankruptcy.

Mr. Serjeant Adair ſtated the caſe on the part of the plaintiffs. He took the law to be clear upon the ſubject. A tradeſman who had committed an act of bankruptcy, could not bind his creditors by this mode of parting with his property. The defendants, therefore, could not detain the goods in queſtion, if they were pledged ſubſequent to the commiſſion of a clear act of bankruptcy, which would be proved in evidence.

Several witneſſes were called on behalf of the plaintiffs, who proved an act of bankruptcy committed by Lauderlay, and his having ſubſequently pledged the goods in queſtion with the defendants.

Mr. Serjeant Shepherd, as counſel for the defendants, admitted the law to be as laid down by Mr. Serjeant Adair; but took ſeveral legal and formal objections to the petitioning creditors debt, in order to deſtroy the foundation of the action.

After a long trial, the jury found a verdict for the plaintiffs.

The defendant's Counſel undertook to deliver up the goods.

COURT OF KING'S BENCH.

Attornies' Clerks.

UPON a queſtion, Whether the articles of clerkſhip of a young man who was clerk to an attorney ſhould not be aſſigned over, it appeared, that the maſter had become bankrupt after the articles were executed, and after the young man had ſerved part of his time; and alſo that, for a part of the time, the maſter had not his certificate to practiſe as an attorney.

It was contended that the circumſtance of the maſter having become bankrupt was not a reaſon why the articles ſhould be aſſigned over.

Lord Kenyon ſaid, that part of the advantages which the clerk of an attorney contracts for, on entering his clerkſhip, is the credit in life of his maſter, and he had no doubt whatever, that the bankruptcy of the maſter was a good reaſon why the articles ought to be aſſigned over, independent of the circumſtance of his not having his certificate to practiſe. The articles were therefore ordered to be aſſigned.

Mr. Garrow applied for the interpoſition of the court in the caſe of an attorney who had aſſumed a name, and had groſsly miſconducted himſelf. He had purchaſed a bill of exchange, amounting to 10l. 17s. 6d. by diſcounting it, and brought a number of actions upon it againſt the acceptor and indorſers, for the purpoſe of getting a bill of coſts, which amounted to 46l.

After this caſe had proceeded a little way, Lord Kenyon deſired that it might be referred to the maſter. Said his Lordſhip, there are many things done which ought not to be done, and which we cannot prevent. We do not ſit here in a Court of Conſcience or of Honour, to extend the bounds of the law. We may be very ſorry, and feel a great deal of reſentment at practices which we cannot puniſh. I ſpeak this without prejudice to this cauſe. This is not the firſt inſtance of the kind I have ſeen. When ſitting at Guildhall, I recollect caſes of bills of exchange which had been taken by attornies merely for the purpoſe of multiplying cauſes. I felt a great deal of indignation on the occaſion, but was forced to conceal it.

Mr. J. Lawrence ſaid, this very much reſembled a caſe that was before the court laſt term. Pinero, an attorney,

brought an action againſt Mr. Knox, on a bill of exchange, for the purpoſe of mounting a bill of coſts. His Lordſhip thought the court had expreſſed their opinion of that tranſaction pretty ſtrongly, and he did not expect ſo ſoon to ſee another of a ſimilar deſcription brought before the court.

COURT OF CHANCERY.

Burke, *v.* Owen.

THE Attorney General ſaid, in the cauſe of Burke againſt John Owen, I am to move your Lordſhip that the defendant, together with his ſervants or workmen, may be reſtrained from publiſhing a pamphlet, entitled, "A Letter from the Right Hon. Edmund Burke to his Grace the Duke of Portland, on the Conduct of the Minority in Parliament. Containing 54 Articles of Impeachment againſt the Right Hon. C. J. Fox." I move that the defendant and his ſervants be reſtrained by an injunction of this Court from publiſhing this Letter, as alſo ſuch other of the Letters of the plaintiff as are in his hands.

In the year 1793, the plaintiff compoſed a work conſiſting of a Letter to his Grace the Duke of Portland, as I have juſt ſtated. Such Letter was never printed by the order of the plaintiff, nor did he ever give to the defendant any authority for printing it, nor parted from his property therein; and therefore, it is clear, he is entitled to the poſſeſſion of it. The defendant had obtained a copy of it, which he has publiſhed, and is now publiſhing it, and making ſale thereof. He has actually ſold a number of copies of it, by which he has gained a certain ſum of money.

My Lord, I do not trouble your Lordſhip with any obſervations on this caſe. My mind is hardly equal to the ſubject of framing obſervations ſufficient to deſcribe ſuch a tranſaction. My Lord, I have an affidavit of theſe facts, which are poſitively ſworn to, and which I now move may be read to your Lordſhip.

This was the affidavit of Henry Rivington, Bookſeller, which ſtated, that he had been informed and verily believed, that the work lately advertiſed and publiſhed by John Owen, the defendant, entitled, "*A Letter*," &c. is the work of the Right Hon. Edmund Burke, the plaintiff,

tiff, and was never printed by his order, whoſe property it was, and now remains; and that the defendant is now publiſhing the ſaid work, without the order, privity, or knowledge of the plaintiff, and without having ſufficient right or title ſo to do.

There was another affidavit of Henry Lamb, clerk to Mr. Rivington, in which he ſwore that he procured a printed copy of this Letter from the defendant, at his ſhop, No. 168, Piccadilly, for 2s. 6d. and that this is the book or work mentioned in the pleadings in this cauſe, as this deponent verily believed.

Lord Chancellor.—Theſe injunctions have been very commonly granted, I believe, in caſes of printed works and private letters.—*Injunction granted.*

SERVANTS.

IF a juſtice of the peace makes an order for the diſcharge of a ſervant, it muſt expreſsly appear upon the face of the order, that it is in a matter within his juriſdiction, otherwiſe it will be bad.—This was finally ſettled in the *K.* v. *the Inhabitants of Hulcott, Hil.* 36 *Geo. III.* In this caſe, a ſervant becoming inſane, was taken by the maſter before a juſtice; who made the following order: "Whereas complaint hath been made before me, *E. B.* one, &c. upon the oath of *J. S.* that *E. L. who was hired by the ſaid J. S. to be his ſervant from Mich.* 1793, *to Mich.* 1794, at the wages of 5*l.* was taken ill on or about the 11th of *Feb.* laſt, and, in conſequence thereof, is become inſane, and wholly unfit for ſervice: and whereas the ſaid *E. L.* hath been brought before me this day, and doth appear to me, the ſaid juſtice, to be inſane and wholly unfit for ſervice; I do therefore hereby order, in purſuance of the ſtatute in that caſe made, that ſhe, the ſaid *E. L.* be diſcharged; and I do hereby diſcharge her, the ſaid *E. L.* from her ſaid ſervice." IT WAS OBJECTED to the order, that it did not appear to be within the juriſdiction of the juſtice, becauſe it was not ſtated in the order that ſhe was a ſervant in huſbandry. And THE COURT were of opinion, that as it did not appear on the face of this order that the juſtice had juriſdiction, the pauper was not legally diſcharged from her ſervice. 6 *Durnf. and Eaſt.* 583.

Settlement by birth.

SETTLEMENT BY BIRTH.

THE place of birth is *prima facie* the place of settlement: therefore, if the juſtices adjudge the ſettlement to be there, and the order of removal be appealed againſt, it is ſufficient on the part of the reſpondents, in ſupport of ſuch order, to prove the birth; and doing ſo it will throw the weight of proving the parents' ſettlement, upon the pariſh appealing. This was decided in the *K.* v. *Heaton Norris*, 36 *G. III.* which was as follows: Two juſtices removed the wife of a ſoldier, and her three children, from *Heaton Norris* to *Beard*: the ſeſſions, on appeal, quaſhed the order, and ſtated a caſe for the opinion of the court: the reſpondents reſted their caſe on the birth ſettlement of the huſband in *Beard*, proving that he was born there. It appeared alſo from the evidence given by the reſpondents, that the father had come to reſide in *Beard* only two years before ſuch birth, an entire ſtranger to the place, neither he nor any part of his family having been at *Beard* before, nor having had any property or connection in the place, and that he came from *Bolton* in *Lancaſhire*, where he had been many years the occupier of a public houſe; and it was not proved that any inquiry had been made by the reſpondents, reſpecting the father's ſettlement. The counſel who were to have argued in ſupport of the order of ſeſſions, acknowledged that they could not diſpute but that the place of the birth of the pauper's huſband was *prima facie* the place of his ſettlement, and the court being of this opinion, quaſhed the order of ſeſſions. 6 *Durnf. and Eaſt.* 653.

Settlement by apprenticeſhip.

SETTLEMENT BY APPRENTICESHIP.

IF an apprentice ſerve a ſecond maſter forty days with the expreſs conſent of the firſt, he gains a ſettlement in the pariſh where that ſervice is performed: and whether the maſter did or did not conſent to the ſervice with the ſecond maſter, is a queſtion of evidence: If, therefore, to prove that the ſervice with a ſecond maſter was with the conſent of the firſt, a written inſtrument be offered in evidence, it muſt appear that ſuch inſtrument was duly ſtamped: and if it be not ſtamped, it cannot be received as evidence; conſequently the ſettlement gained by the firſt ſervice will remain. Thus in the caſe of the *K.* v. *St. Pauls', Bedford, M.* 36 *G. III.* the pauper having been removed from *St. Paul's, Bedford*, to *Kempſton*, the ſeſſions

ſions quaſhed the order, and ſtated the following caſe, for the opinion of the court. On 29th *December*, 1777, the pauper was bound apprentice for 7 years to a cordwainer of *Kempſton:* the pauper ſerved in *Kempſton* till *October* 1782, when he removed with his maſter to the pariſh of *Biddenham*, where the apprentice continued till the death of his maſter on 10th *October*, 1783. On the 24th of *November* following, an agreement was entered into between the maſter's executrix and another perſon, and endorſed on the indenture, by which the executrix aſſigned over the apprentice to ſuch perſon for the remainder of the term, and he agreed to teach the apprentice the ſame trade, and to provide him with board and lodging till the end of the term. This agreement was ſigned by the executrix and the ſecond maſter, but not ſtamped. Immediately after the aſſignment, the pauper went into the ſervice of the ſecond maſter in *Kempſton*, and continued to reſide there without interruption till *September* 1784. The indenture being proved, the reſpondents offered the written agreement in evidence, which the ſeſſions rejected, becauſe it was not ſtamped: the reſpondents then offered parol evidence of the verbal agreement by the executrix with the ſecond maſter, that the apprentice ſhould ſerve with him the remainder of the term of 7 years under the indenture, and of the pauper's conſent. This evidence the ſeſſions alſo rejected.—By lord *Kenyon*, Ch. J. it is ſettled that, if an apprentice ſerve a ſecond maſter 40 days with the expreſs conſent of the firſt, he gains a ſettlement in the pariſh where that ſervice is performed: the firſt maſter has not indeed the abſolute controul over the apprentice, ſo as to compel him to go to any part of the kingdom, and ſerve another maſter: but if he do ſerve a ſecond with the conſent of the firſt, it is ſufficient: it muſt be with the conſent of the firſt maſter, for it has been decided, that his *mere knowledge* of ſuch ſervice will not anſwer the purpoſe.—The queſtion here is a queſtion on evidence, whether the executrix of the maſter did or did not conſent to the ſervice with the ſecond maſter: the court of ſeſſions were of opinion that the inſtrument which was produced to prove that conſent could not be received in evidence, becauſe it was not ſtamped; and therefore it becomes neceſſary to conſider how far the ſtat. 23 *Geo. III. c.* 58, affects this caſe. By that act all agreements are to be ſtamped,

Settlement by apprenticeſhip.

Settlement by apprenticeship.

ſtamped, except ſuch as fall within any of the exceptions mentioned in the fourth clauſe, which among other things enacts, that the act ſhall not extend to "any memorandum or agreement for the hire of any labourer, artificer, manufacturer, or menial ſervant." It is ſaid that this perſon comes within ſome one of the deſcriptions there mentioned: but he was not a *ſervant*; he had acquired another ſpecific denomination well known in the law,—an apprentice. The exception clearly refers to caſes where there is a hiring, but that was not the preſent caſe; *hiring* is not applicable with any propriety to the caſe of an apprentice. Apprentices and ſervants are characters perfectly diſtinct: the one receives inſtruction, the other a ſtipulated price, for his labour. I think, therefore, that we ſhould be doing violence to this act, to determine that an apprentice comes within the terms in this clauſe of exception; and conſequently the ſeſſions did right to reject this inſtrument. And when an attempt was made to give parol evidence of the agreement, they alſo did right in refuſing to receive it, becauſe the agreement was reduced to writing. I am ſatisfied that *the juſtices at the ſeſſions were warranted in rejecting the agreement: and if ſo, there was no evidence to ſhew any conſent that the apprentice ſerved the ſecond maſter, with the conſent of the executrix of the firſt.* *Groſe* J. concurred, and ſaid the meaning of the act is, that if any perſon wiſh to avail himſelf of an agreement in writing, it ſhall not be produced in evidence at any time, unleſs it be ſtamped: this being the caſe, there was no evidence to ſhew that the executrix of the firſt maſter conſented to the apprentice's ſerving the ſecond; and therefore the apprentice is ſettled in *Biddenham*, where he ſerved his firſt maſter 40 days.—*Lawrence* J. was of the ſame opinion.—Order of ſeſſion confirmed.

In the courſe of the argument in the caſe of the *K.* v. *the Inhabitants of Hindringham*, *Hil. Ter.* 36 *Geo. III.* it was contended, that an infant, if no other perſons join him in executing the indentures of apprenticeſhip, may avoid them at any time, as well before as after he comes of age; but lord *Kenyon*, Ch. J. (the court concurring) ſaid, he deſired it might not be taken for granted, that an infant who binds himſelf apprentice, a contract ſo notoriouſly for his own benefit, may put an end to that contract at any time during his minority.

And

Settlement by apprenticeſhip.

And in fact, in the caſe of the *K.* v. *Auſtrey*, *Hil.* 31 *Geo. II.* in *Burrows' Sett. Caſes* 441, it was expreſsly decided that *the indentures cannot be diſcharged by the conſent* of the apprentice if he be under age.

But even where an apprentice may avoid the indentures, the leaving the maſter's ſervice, and going into the ſervice of another with the maſter's approbation, is not ſuch an avoidance.—This was decided in the above caſe of the *K.* v, *Hindringham*, which was as follows: The pauper being of the age of 17, bound himſelf an apprentice to a mariner for 4 years, and reſided at *Blakeney*, under his indenture of apprenticeſhip, more than 40 days. When he had been an apprentice about 13 or 14 months, he went on ſhore from out of one of his maſter's ſhips, and meeting with a preſs-gang, he entered into his majeſty's ſervice, as a ſailor, with the conſent of his maſter; but the indentures of apprenticeſhip were not delivered up or cancelled by the maſter during the term of his apprenticeſhip. He continued in the king's ſervice about two years, and was then diſcharged; after which, *viz.* at Whitſuntide, 1783, he let himſelf to a perſon of *Hindringham*, from that time to *Michaelmas* following; and at that *Michaelmas* (which was the *Michaelmas* before the term of the indenture of apprenticeſhip would have expired) the pauper let himſelf the following year to the ſame maſter, and ſerved him for that year in *Hindringham*. It was contended that the indentures were put an end to when the apprentice entered into the king's ſervice, and being thus avoided, he became his own maſter, and by the hiring and ſervice in *Hindringham*, gained a ſettlement there.—But by lord Kenyon, Ch. J. and the court, There is no ground for ſaying that the apprentice did any act to put an end to the indentures when he entered into the king's ſervice. In this caſe the pauper bound himſelf to a maſter by indentures, under which he ſerved in *Blakeney* more than 40 days; afterwards, when he was preſſed into the king's ſervice, he agreed to go as a volunteer, with the conſent of his maſter, evidently implying that he did not then put an end to the indentures. It appears, therefore, that the indentures ſtill continued in force, and conſequently the pauper could not enter into a legal contract of hiring himſelf with another, he not being at that time *ſui juris*. 6 *Durnf. and Eaſt.* 557.

So

Settlement by apprenticeship.

So in the case of *Ashcroft* v. *Bertles*, *E.* 36 *G. III.* which was an action for enticing away and harbouring an apprentice, it appeared, that the apprentice, after he had attained the age of 21 years, eloped from his master, and entered into the service of another person: the master brought his action against this person, and obtaining a verdict, it was insisted, upon a motion for a new trial, that he could not maintain such an action, the apprenticeship being put an end to by the young man's quitting his master's service, not secretly or fraudulently, but openly and avowedly, for the purpose of dissolving the relation between them. BUT THE COURT declared themselves perfectly satisfied with the verdict, and said that (supposing the indentures to be voidable, which they were not prepared to decide *) the mere act of quitting the master's service was not an avoidance of them.

SETTLEMENT BY MARRIAGE.

Settlement by marriage.

AN action for criminal conversation is the only *civil case* where an actual marriage need be proved; for in every other case, general reputation, the acknowledgment of the parties themselves, and reception by their family and friends as man and wife, is *prima facie* good and admissible evidence of a marriage, though no register whatever be produced. *Espinasse's Cases at N. P.* 214, 354. *Peake's Cases at N. P.* 232.

But the registers of the Fleet ought not in any case to be received as evidence. *Ibid.*

SETTLEMENT BY HIRING AND SERVICE.

Settlement by hiring and service.

THE residing with a relation upon an invitation to come and live with him, and performing the work of a servant with such relation for several years, is not sufficient to gain a settlement, the service not being under any hiring. This was decided in the case of the *K.* v. *the Inhabitants of Stokesley*, *Tr. Ter.* 36 *Geo. III.* which was as follows. An order for the removal of a pauper and his family, from *Wylan* to *Stokesley*, was, on appeal, confirmed by the sessions, subject to the opinion of the court, on the following case:—the pauper, who was illegitimate,

* See the case of *Mary Ann Davis*, in 5 *Term Rep.* 715, where it was decided that infants cannot be bound by indentures of apprenticeship beyond 21; but that they may dissent from them after they arrive at that age.

was

was born at *Little Whittington*; and after his mother's death, which happened when he was about ſix years old, he went to live with her brother at *Mordon*, *as a relation*, *and not under any hiring*: his ſaid uncle farmed about 40l. a year, and ſet him to drive his plough, the firſt or ſecond day after he went to *Mordon*; and he continued working at the farm for the ſpace of about eight years, but received no wages or any other reward during that time, except meat and clothes; and he and his ſaid uncle wrought all the work of the farm during the laſt three or four years of that period. The pauper having ſome words with his uncle, ſhortly before *May Day*, went to *Darlington* hiring, and *there hired himſelf to a perſon of Aircy Holm, to be a ſervant in huſbandry for one year; and he ſerved the ſame at Aircy Holm aforeſaid accordingly*. Shortly before the expiration of his ſervice at *Aircy Holm*, he received a letter from his uncle requeſting his return to *Mordon*, and ſaying, that if he would come and live with him *as before*, he (his uncle) could ſurely make it as good or better for him than a common ſervice. During the year the pauper ſerved at *Aircy Holm*, his uncle had no regular hired ſervant, but employed an elderly man as a labourer, to lead his lime and manure, thraſh his corn, and do ſuch other work about his farm, as he did not like to do himſelf; and which the pauper uſed regularly, year after year, as he grew in ſtrength, to do for him. Agreeably to his uncle's requeſt, he returned to him at *Mordon* as ſoon as he left his ſervice at *Aircy Holm*, and lived with him there about three years, at the expiration of which he went with his uncle to *Stokeſley*, and lived with him there about four years and an half; during all which time he performed the greateſt part of the work of the farm, as his uncle at that time kept no other ſervant, and was himſelf an elderly and infirm man. When the pauper returned from *Aircy Holm* to *Mordon*, he made no agreement with his uncle, either for what time or for what conſideration he ſhould ſerve him; but his uncle often promiſed him, if he would ſtay with him for his life, he would leave him his ſtock and crop, and farm, as his own, his uncle's ſon having got a good place, and being otherwiſe well provided for; and his uncle of courſe found him meat and clothes, and uſed to give him a few ſhillings when he went to market, or from home, but nothing

Settlement by hiring and ſervice.

Settlement by hiring and ſervice.

more. The pauper left his uncle about the *Martinmas* time, or a little after, and believed himſelf at liberty to leave him at any time. Immediately afterwards he married, and has not gained any ſettlement ſince. At the time the pauper and his uncle parted, they had no reckoning, and did not part friends.—In ſupport of the order, it was argued that the pauper having performed all the offices of a ſervant for ſo long a time, though without wages, the court would be warranted in raiſing the implication of a general hiring.—But by lord *Kenyon*, Ch. J. This argument might have had a good effect, if addreſſed to the court of quarter ſeſſions; but it cannot have any weight here, becauſe the facts ſtated in the caſe negative any hiring: indeed that argument applies as well to the firſt as to the ſecond ſervice; and the juſtices have expreſsly ſaid that there was no hiring during the firſt ſervice; they alſo ſtate that before the pauper returned to his uncle, the latter propoſed to him to come and live with him *as before*, that is, in the ſame relation. This excludes the idea of any hiring for a year. I do not wiſh to break in upon thoſe caſes where it has been determined that a general hiring is a hiring for a year, or that a hiring under certain circumſtances may be preſumed; and if the juſtices had in this caſe found that their was a yearly hiring, it would have concluded the caſe. But here they have expreſsly found that *the firſt ſervice was not under any hiring*, and that *the* SECOND *was as before;* and we cannot contradict theſe facts, and introduce our own conjectures on the ſubject, in oppoſition to this finding.—BY THE COURT, order of ſeſſions quaſhed. 6 *Durnf. and Eaſt.* 757.

POST HORSES.

Farming poſt horſes.

BY 36 *G. III. c.* 84, the commiſſioners of the treaſury are empowered, either by themſelves or the commiſſioners of ſtamps, to let to farm the duties ariſing from poſt horſes for a further term, not being for a longer time than until *Feb.* 1, 1800.

37 *G. III. c. 53. An Act for carrying into Execution His Majeſty's Order in Council of the Third of* May, 1797, *For an Increaſe of Pay and Proviſions to the Seamen and Marines ſerving in His Majeſty's Navy; and to amend ſo much of an Act, made in the* 35 *G. III. as enables Petty Officers and Seamen, Non-commiſſioned Officers of Marines, and Marines, to allot Part of their Pay for the Maintenance of their Wives, Children, or Mothers.* [9th May, 1797.]

Preamble. WHEREAS an order was made by your Majeſty in council, on the third day of *May* one thouſand ſeven hundred and ninety-ſeven, for an Increaſe to the preſent allowance of wages and proviſions for the petty officers, ſeamen, landmen, and marines, ſerving in your Majeſty's fleet: We, your Majeſty's moſt dutiful and loyal ſubjects, the Commons of *Great Britain* in parliament aſſembled, being deſirous of enabling your Majeſty to carry the ſame into full and immediate execution, do moſt humbly beſeech your Majeſty that it may be enacted; and by the 37 *G. III. c.* 53. it is enacted, that a ſum not exceeding three hundred and ſeventy-two thouſand pounds, be granted to his Majeſty on account, towards enabling him to make an addition of five ſhillings and ſixpence *per* month to the preſent wages of the petty officers and able ſeamen belonging to his Majeſty's fleet; an addition of four ſhillings and ſixpence *per* month to the wages of ordinary ſeamen; an addition of three ſhillings and ſixpence *per* month to landmen; and for continuing to the marines, when embarked and ſerving on board his Majeſty's ſhips, the allowances uſually called *conſolidated allowances made to marines when ſerving on ſhore, videlicet*, to ſerjeants, corporals, and drummers, at the rate of two-pence, and to privates, at the rate of two-pence farthing, *per diem*: and alſo to enable his Majeſty to defray the expence of providing for the full allowance of proviſions being iſſued to the crews of his Majeſty's ſhips, without any deduction whatſoever on account of leakage or waſte, and for paying ſhort allowance money to the crews of any of the ſaid ſhips, in lieu thereof, until the ſame can be carried into full effect. *ſ.* 1.

£. 372,000 granted to his Majeſty, for increaſe of pay and allowance.

Petty officers, ſeamen, and marines, &c. wounded, to

And it is further enacted, that all petty officers, able ſeamen, ordinary ſeamen, landmen, and marines, who may hereafter be wounded in action with the enemy, ſhall receive the full amount of their wages and allow-

wages and receive their allowances.

ances until their wounds ſhall be healed, or until being declared incurable they ſhall receive a penſion from the cheſt at *Chatham*, or be admitted into the royal hoſpital at *Greenwich*, *ſ.* 2.

Pay hereby given may be allotted for the maintenance of families, as by 35 *G. III. c.* 28.

And whereas, by 25 *G. III.* entituled *An Act to enable Petty Officers in the Navy, and Seamen, Non-commiſſioned Officers of Marines, and Marines, ſerving in His Majeſty's Navy, to allot Part of their Pay for the Maintenance of their Wives and Families*; it is enacted, that it ſhall be lawful for petty officers and non-commiſſioned officers of marines, to allot half their pay, able-bodied ſeamen five-pence *per* day, ordinary ſeamen and landſmen four-pence *per* day, and marines Three-pence *per* day, for the maintenance of their wives and children or mothers: Be it further enacted, that, after the paſſing of this Act, it ſhall be lawful for the commiſſioners of his Majeſty's navy, or any three of them, to direct the treaſurer of the navy, or any receiver general of the land tax, collector of cuſtoms, or collector of exciſe, or clerks of the checque, to whom an allotment made conformable to the ſaid Act ſhall have been addreſſed, to increaſe, from the twenty-fourth day of *April* 1797, the allowance in the payments he or they or any of them may thereafter make to the wife or mother of any petty officer or ſeaman, non-commiſſioned officer of marines, or marine, to a proportion equal to half the increaſed pay of ſuch petty officer or ſeaman, non-commiſſioned officer of marines, or marine, provided for by this act; and which ſhall thereupon be paid in the ſame manner as if ſuch declaration and order of allotment had been originally made according to the rate of half the pay of petty officers, ſeamen, and marines, as by this act is provided. *ſ.* 3.

Allotments of pay to be calculated according to the annexed ſchedule.

And it is further enacted, that when any petty officer or ſeaman, non-commiſſioned officer of marines, or marine, ſhall hereafter allot any pay for the maintenance of his wife and children or mother, the ſame ſhall be at a rate calculated as nearly equal as may be to half his pay, and according to the table in the ſchedule annexed to the act. *ſ.* 4.

A TA-

A TABLE OR SCHEDULE

Shewing the Allowance to be granted by Allotment calculated according to the Rates of Pay *per* Month.

PAY,	ALLOWANCE,	
Per Month.	*Per* Day.	*Per* Month.
£. s. d.	£. s. d.	£. s. d.
5 0 0	0 1 9	2 9 0
4 15 6	0 1 8	2 6 8
4 10 0	0 1 7	2 4 4
4 5 6	0 1 6	2 2 0
3 15 6	0 1 4	1 17 4
3 11 6	0 1 3	1 15 0
3 5 6	0 1 2	1 12 8
3 1 8	0 1 1	1 10 4
2 19 6	0 1 0½	1 9 2
2 17 6	0 1 0	1 8 0
2 15 6	0 0 11½	1 6 10
2 13 4	0 0 11	1 5 8
2 10 6	0 0 10½	1 4 6
2 7 6	0 0 10	1 3 4
2 5 6	0 0 9½	1 2 2
2 2 6	0 0 9	1 1 0
2 1 6 2 0 6	0 0 8½	0 19 10
1 19 6 1 19 3	0 0 8	0 18 8
1 17 6	0 0 8	0 18 8
1 15 6	0 0 7½	0 17 6
1 13 6	0 0 7	0 16 4
1 11 6 1 10 6	0 0 6½	0 15 2
1 9 6	0 0 6	0 14 0
1 3 6	0 0 5	0 11 8
1 2 6	0 0 4½	0 10 6
0 19 3	0 0 4	0 9 4
0 14 0	0 0 3	0 7 0

APPEAL-

APPEALING *againſt* SURCHARGES.

Appeals againſt a ſurcharge muſt be preferred in due time.

AN appeal againſt a ſurcharge muſt be preferred on the day appointed by the commiſſioners, and cannot be made after the expiration of the year, within and for which the tax is to be collected —This was decided in the caſe of *the K.* v. *Walker, Clerk, and others, Mic. Ter.* 36 *Geo. III,* which was as follows: The defendants, who are commiſſioners for the execution of certain acts made for granting duties on ſervants, horſes, and carriages, in the diſtrict of *Wellingborough,* in the county of *Northampton,* were called upon by a rule to ſhew cauſe why a mandamus ſhould not iſſue, commanding them to ſtate ſpecifically and ſign the caſe as it appeared on the appeal of the earl of *Egmont,* againſt a ſurcharge made upon him in reſpect of his horſes and ſervants, for the year commencing 5th *April,* 1793, together with their determination thereupon, and to cauſe the ſame to be delivered to the earl's agent, purſuant to the ſtatute. It appeared plainly, that the ſurcharge had been made upon a miſtake of a letter written by lord *Egmont* to his agent, directing the entry to be made; but the point on which this caſe finally turned, was whether the appeal was made in time.—*The taxes in queſtion were thoſe which had been aſſeſſed for one year, from 5th April,* 1793; *and it was upon this aſſeſſment that the ſurcharge complained of had been made; the laſt appeal day for that year was in January,* 1794, *after which, viz. in Auguſt,* 1794, *the appeal was made, which the commiſſioners were of opinion came too late, and that they had no juriſdiction to hear it.* By the ſtat. 25 *Geo. III. c.* 43, impoſing the duties in queſtion. *ſ.* 15 and 19, the aſſeſſment of ſuch duties is to be made from 5th *April* in every year for the year enſuing, and to be collected and paid in the ſame manner as under the 20 *Geo. II. c.* 3, and *c.* 42, and 21 *Geo. II. c.* 10, for raiſing the duties on windows; and by ſect. 35 of the 25 *Geo. III. c.* 43, "any perſon thinking himſelf aggrieved, may appeal to the comiſſioners, any two or more of whom ſhall and are thereby required to hear and determine ſuch appeal (except where it ſhall appear to the commiſſioners that the appellant ſhall have omitted to deliver in his liſt of ſervants in the manner therein pointed out); and all ſuch appeals ſhall be heard and determined for the firſt aſſeſſment,

aſſeſſment, on ſuch days as the ſaid commiſſioners for the execution of this act, or any two or more of them, ſhall appoint, and afterwards on the days to be appointed and in the manner directed by the act of the 20 and 21 *Geo. II.* above referred to.—The clauſe of appeal in 25 *Geo. III. c.* 47, impoſing the duty on carriages, *ſ.* 30, is expreſſed in the ſame terms as the former; the 21 *Geo. II. c.* 10, one of the acts referred to in the act of the 25 *Geo. III*, repeals the clauſe relating to appeals in the 20 *Geo. II*, the the other act referred to, and enacts, *ſ.* 7, "that all ſuch appeals as ſhall be made to the commiſſioners between the 25th of *March*, and the 20th of *Auguſt* yearly, ſhall be heard and determined by the commiſſioners upon ſuch days as ſhall by them be appointed for the hearing of ſuch appeal, between the 20th *Auguſt*, and 15th *September*, and 20th *January* following year, ſhall be heard and determined by the ſaid commiſſioners, upon ſuch other days as ſhall be appointed for the hearing thereof, between the 20th *January* and the 18th *February* following, yearly.—By Lord *Kenyon*, Ch. J. I think the commiſſioners did right in not hearing the appeal, it not having been preferred within the time appointed by them under the proviſions of the act of parliament, but after the period within which the duties were to be collected and paid into the exchequer. It is true that in this caſe the money would be certainly forthcoming when called for; but we muſt lay down a general rule, applicable to all deſcriptions of perſons upon whom theſe taxes were intended to attach; the neceſſity of which regulation muſt in many caſes be too obvious to inſiſt upon.—There has been a miſtake through the whole of this procedure. When a perſon has various places of reſidence, he ought in ſtrictneſs to ſign a return in each of them, mentioning in which place he intends to pay for thoſe ſervants, horſes, or carriages, which he means to enter. That, it ſeems, was not done upon the preſent occaſion, and from hence have originated all the confuſion and miſtake that enſued. There is no doubt but that lord *Egmont* intended honourably, and the conſtruction put on his letter was ſtrained: but ſtill the appeal not having been preferred in time, the commiſſioners did right in refuſing to enter upon it.—By the court, rule diſcharged. *6 Durnf. and Eaſt.* 433.

His

His lordſhip added, that though it was uſual, in applications againſt perſons of this deſcription, to grant them coſts where they had acted rightly, yet as the defendants were ſupported on this occaſion by the tax-office, there was the leſs neceſſity, under the preſent circumſtances, to diſcharge the rule with coſts.

COURT OF KING's BENCH.

SATURDAY, MAY 13.

THE KING *v.* HALL.

THE defendant was brought into court to receive judgment for obſtructing a revenue officer in "endeavouring to ſeize a quantity of foreign ſpirits."

It appeared that an exciſe officer, hearing the defendant, who lived at Cornwallow, had contraband liquor in his houſe, went in order to ſeize the ſame, accompanied by a ſerjeant and two ſoldiers, when the defendant threw the officer down ſtairs—damn'd the ſerjeant's eyes, and told him—"If it was not for the law, he ſhould not go away alive."—He alſo called him "a damn'd black ſon of a b—," ſaid "he did not care a fig for his cutlaſs, and would have a ſtroke at him."

On the part of the defendant, the affidavits of two neighbouring Juſtices and the Churchwardens were produced and read, giving him a good character, and attributing his miſconduct in queſtion to the effects of incidental paſſion.

The court ordered the defendant to be remanded until a future day.

THE KING *v.* CRABB.

THIS was a motion for judgment for a nearly ſimilar offence. The defendant in this caſe threatened to throw the officer down a *well*, wherein he had diſcovered ſome ſpirits *tied to a bucket*.

Crabb was alſo remanded.

OLD BAILEY.

ADMIRALTY SESSIONS.

Tuesday, May 30.

THE seſſions were opened before Sir James Marriott, Judge of the Admiralty, Mr. Juſtice Lawrence, and Mr. Juſtice Heath.

James O'Brian, *Daniel Henneſſy*, *John Leman*, *James Harley*, *William Meyh*, and *Hugh M'Kenny*, were charged with the offence of piracy, in being natural-born ſubjects of our lord the king, and being found on board the Difficile, a ſhip of war, commiſſioned by the government of France, then at open war with this country, and attempting to ſeize the ſhips, goods, &c. of our ſaid lord the king, &c.

It appeared in the courſe of the evidence for the crown, which was of great length, that the priſoners had been captured at different times, by French ſhips of war, and taken into Breſt, where they lay for ſome time, when they entered on board the Difficile, a French cutter of marque, and ſhortly were taken in that veſſel, by his majeſty's ſhip the Phœnix, off Uſhant: to the officers of which, they all ſurrendered as Engliſhmen.

The principal witneſſes againſt them were the captain and the ſecond lieutenant of the Difficile, who were captured at the ſame time. By their ſtatement it appeared that they entered at Breſt on board their veſſel, in the form preſcribed by the French government, and that they were neither trepanned nor forced on board. They were not poſitive as to all their perſons, nor to the particular days on which they entered; one deſcribed himſelf as a Dutchman, another as an American, &c.

By the defence of the priſoners, who, it appeared, all but one were Iriſhmen, it tranſpired, that they were taken at different periods, in different Britiſh ſhips, and carried into Breſt, where they were confined for ſeveral months. They deſcribed themſelves as ſuffering the greateſt hardſhips, from hunger, want of clothes, the effects of vermin, &c.—that they eſcaped ſeveral times from priſon, and ultimately entered on board this veſſel, being told by the officers ſhe was an American; on finding the deception, they endeavoured to eſcape but were prevented.

After a conference of better than half an hour, the Jury pronounced all theſe priſoners—*Not Guilty*.

William Mildrum was indicted for the ſame offence, being taken on board the Pichegru French armed ſchooner, and aiding the king's enemies to capture the ſhips and property of his loyal ſubjects, he being himſelf a natural born ſubject of the king, &c.

It appeared that the Pichegru was captured on the 6th of May, by the Rattler ſloop of war, off Cherburg. On the foregoing day, the Pichegru had taken an Engliſh brig; there were about 45 hands on board at the time, nine of whom appeared to be Britiſh ſubjects; among theſe was the priſoner; he told the boatſwain of the Rattler, that he was an Iriſhman, ſerved his apprenticeſhip to a baker there, and had worked four years afterwards in London.

However in his plea to the indictment, he denied his being a natural-born ſubject; in conſequence of which, ſuch evidence was adduced by the crown as proved him to be born at Newburgh in Scotland, and bound to a baker in London.

In his defence, he alledged that he failed in buſineſs in London, and was obliged to go to ſea; he went in an American from Cowes to Havre-de-Grace, where he was paid off, and in ſuch diſtreſs, as obliged him to enter on board a French ſhip, which he thought was bound to the Weſt-Indies.

It appeared, however, that he entered voluntarily, and knew the veſſel to be a ſhip of war at the time.

Verdict, *Guilty*—DEATH.

FORGERIES.

WEDNESDAY, *May*, 31.

JOHN HARRIMAN was indicted for forging, &c. an order for the payment of 10*l.* purporting to be drawn by C. Foſter and Co. at Mancheſter, on the houſe of Meſſrs. Pybus, Call, &c. Bankers in London, in favour of Edward Wiltkinſon, Eſq. with intent to defraud Joſeph Walſh, &c.

The proſecutor, Mr. Walſh, ſtated, that in the month of February laſt, the priſoner came to his houſe in Crooked-lane, and purchaſed bird-cages to the amount of twenty-two ſhillings. He tendered the above note in payment, and received eight guineas from Mr. Walſh. The priſoner deſired the cages and the remaining change of the note

note, ten ſhillings, might be left for him at a certain place. They were accordingly ſent, but no ſuch perſon as the priſoner was to be found, or was known there. The following day the proſecutor applied at the houſe of Meſſrs. Pybus, but they alſo knew no ſuch perſon as the priſoner.

Thus far the evidence was complete; and the proſecutor ſtated he had ſent a perſon to Mancheſter to enquire reſpecting C. Foſter and Co. by whom the note was purported to be drawn; but it appeared that his perſon was not brought into court to prove his neceſſary part in the buſineſs. It was the opinion of the bench, that a material defect had ariſen, inaſmuch, as no ſort of evidence was adduced to prove the forgery. The priſoner was diſcharged, and the court could wait no longer.

Agreeably to the direction of the bench, the Jury acquitted the priſoner.

The ſame priſoner was charged with a ſecond forgery, and uttering a bill for the payment of five guineas, purporting to be drawn at Yarmouth, by Thomas King, on the bank of Meſſrs. Pybus and Co. in London, with intent to defraud Thomas Nelſon, &c.

In this caſe, it appeared that the priſoner bought a piece of Iriſh linen, and two ſilk handkerchiefs, amounting to the ſum of three pounds ſix ſhillings and two-pence, at the ſhop of the proſecutor, Mr. Nelſon, in Biſhopgate-ſtreet. He paid for it by means of the forged draft, and received the change; he took away the articles with him. At this moment a thought ſtruck the ſhopman that all was not right; he followed the priſoner, and dogged him into a court at the end of Shoreditch, where he ſaw him go into a houſe. The bill was ſoon after found to be a forged one, and the priſoner, by means of the ſhopman's precaution, was immediately apprehended. A perſon was diſpatched to Yarmouth, to enquire whether the ſuppoſed drawer of the note reſided there, but the ſearch was fruitleſs—no ſuch perſon was to be found.

The priſoner left his defence to his counſel, who objected to the evidence as incomplete; the draft purported to be drawn at Yarmouth, but only one of thoſe towns, that in Norfolk was ſearched—that in Hampſhire was neglected. It did not appear in evidence, that no ſuch perſon as the ſuppoſed drawer of the bill reſided there. He thought the caſe ſhould not go to the Jury.

The bench, however, over-ruled this idea. It was obſerved, that whenever Yarmouth in Hampſhire was meant, it was expreſſed in a particular manner; whenever Great Yarmouth was meant, it was called Yarmouth generally; it behoved the priſoner to ſhew how he came by the note—and nothing of that kind appeared.

The Jury found the priſoner *Guilty*.

HIGHWAY ROBBERY.

HENRY ELLISON, alias *Vale*, *Aaron Withers*, and *George Withers*, were indicted for aſſaulting William and Elizabeth Beresford on the king's highway, putting them in fear, and taking from the perſon of the ſaid Elizabeth a metal watch and nine or ten ſhillings in monies, the property of the ſaid William Beresford.

It appeared that Mr. and Mrs. Beresford were coming to town on the 1ſt of May, near nine in the evening. They were met by the three priſoners on the Paddington road—they ſtopped the chaiſe—Vale held a piſtol to Mr. Beresford's breaſt, and aſked him for his watch, pocket-book, and money. He anſwered he had none, but requeſted him to uſe no violence, and that he ſhould have Mrs. Beresford's watch. On this the priſoner Vale ſtretched acroſs Mr. Beresford, and pulled the lady's watch from her ſide with much force.—The priſoner George Withers was all this time holding a piſtol towards Mrs. Beresford. She gave up her pocket-book, which, after being examined by the priſoner, was returned to her.—Aaron Withers held the reins of the horſe during this tranſaction. The proſecutor and his wife were in a ſingle-horſe chaiſe. Mr. Beresford was poſitive of the identity of Elliſon's perſon, and alſo of Aaron Withers, having had occaſion to know them before. Of George Withers's perſon he was not ſo poſitive.—The robbers then rode off towards Staines, and deſired the proſecutor not to look after them. The latter then went to a public-houſe in the neighbourhood, the Red Lion, and related the tranſaction.—The priſoners were apprehended the following day.

Mrs. Beresford corroborated in moſt points the ſtory of her huſband—ſhe depoſed it was near the one-mile ſtone, on the Paddington road, they were attacked—the priſoner

George

George Withers held a piſtol to her temple—ſhe ſtedfaſtly obſerved the priſoner Aaron Withers, who held the reins.

This lady underwent a very cloſe examination by the priſoners' counſel on the point of identity, but in fine, he had no doubt of that kind.

The priſoners were apprehended by Baker and Creedland, two of the Bow-ſtreet Officers. No property belonging to the proſecutors was found in their poſſeſſion. They left their defence to their counſel, which conſiſted in endeavouring to prove an *alibi*.

Nine witneſſes were examined with the greateſt ſtrictneſs, and of courſe at conſiderable length.

Mr. Juſtice Groſe ſummed up the evidence to the foregoing effect.

At half paſt twelve o'clock the Jury retired—they ſtaid out of court about half an hour, and at their return pronounced the three priſoners—*Guilty*—DEATH.

COURT OF KING'S BENCH.

Tueſday, May 16.

THE ASSIGNEES *of* CAMERON *v.* THE EAST INDIA COMPANY.

THE circumſtances of this caſe are as follow: Taylor ſent goods from India by Cameron, in the ſervice of the Eaſt India Company, and who in that capacity had a right to ſhip goods in his own name, and ſell them for the uſe of Taylor. He accordingly brought the goods to England—they were ſold at the company's ſales as his property, and the money remained in the hands of the company. Cameron becoming a bankrupt, the money was claimed by his aſſignees—it was alſo claimed by the real owner of the goods. The aſſignees recovered in an action, againſt the company, ſubject to the opinion of the court—Whether Cameron had, before his bankruptcy, ſuch a property in the goods as entitled his aſſignees to the produce.

After the caſe had been fully argued, the court this day decided,

That Cameron was the apparent owner of the goods; upon the ſtrength of his being ſub-owner, he might have ſold them and diſpoſed of the money. The original owner

not

not having given notice to the company that the goods were his, Cameron was oſtenſibly the owner; and therefore the goods came within the meaning of the ſtatute of bankruptcy.—Accordingly judgment was given that the verdict ſhould ſtand.

Caution to Tavern-keepers, Coffee-houſe-keepers, Victuallers, &c.

BETTS, *qui tam*, *v.* CAMPBELL.

ON Monday an action was tried, wherein James Betts was plaintiff, and Mr. Campbell, of the Shakeſpeare tavern, Piazza, Covent-garden, defendant, for having, as a victualler game in his poſſeſſion, and alſo expoſing it for ſale.

The declaration ſtated four times having in poſſeſſion, and four times expoſing to ſale, viz. on the 1ſt of October laſt, a partridge—on the 7th of January, a hare—on the 8th of January, a hare—on the 17th of January, a pheaſant.

In the eye of the law, the having in poſſeſſion, is deemed an expoſing to ſale—there is 5l. on each penalty: ſo that the whole of the penalties amounted to 40l. beſides coſts, which would have brought the whole to near 100l.

Mr. Erſkine for the plaintiff, went only for two penalties, viz. the 7th and 17th of January.

A perſon of the name of Watts ſwore poſitively that he peeped, on the evening of the 7th of January, into the Shakeſpeare tavern, and ſaw two hares hang up on the left hand ſide in the larder.

On his croſs examination it appeared, that he went from Serjeant's Inn, Chancery lane, by deſire of Betts to look into the larder of the Shakeſpeare, and to ſee what game there was, and ſaw two hares.

George Whitſud, another witneſs, alſo ſwore, he peeped into the Shakeſpeare, and ſaw a pheaſant hanging in the larder on the 17th.

Theſe were the only witneſſes for the proſecution.

Mr. Garrow in an addreſs of half an hour, ſaid he had ſeveral witneſſes, who would fully contradict thoſe witneſſes; who could firſt prove that the larder was on the *right hand* ſide, and that never any game whatever was hung

hung up in it; ſo that the whole was a fabrication, for the purpoſe of extorting penalties. The character of the informer he painted in very ſtrong colours; was very ſevere upon the witneſſes, and commented largely on the conduct of the attorney.

Lord Kenyon ſhortly ſaid, "Gentlemen of the Jury, I have read the act, and the caſe is reduced to this point —If you can believe theſe witneſſes, you muſt find a verdict for the plaintiff."

The Jury immediately gave a verdict for the defendant.

SHARP *v.* SHERIFF.

Monday, May 2.

THIS is a caſe which we have ſtated ſeveral times already.

Mr. Garrow informed the court, that the defendant had been brought up by a writ of Habeas Corpus, and moved that he might be ſurrendered in diſcharge of his bail, which was ordered accordingly.

Mr. Erſkine then moved on the part of the defendant, that he might be admitted to bail on the criminal charge. It was very true that the crime of murder had been committed on a Revenue Officer, in Ireland, of the name of Walſh, by one James Sheriff and two others. But it was clear from affidavits, which he had in his poſſeſſion, that the James Sheriff who committed the murder was totally a different man, and that the defendant was perfectly innocent.

Lord Kenyon, after hearing all the circumſtances of this caſe, ordered the defendant to be committed to the priſon of the King's Bench; and thoſe who were concerned on the part of the proſecution ſhould ſend to Ireland without further delay, to requeſt that ſome perſon who could identify the man who committed the murder might come over, and look at the defendant. His lordſhip thought, as a murder had been committed by one James Sheriff, and as it was charged in one affidavit to have been committed by the defendant, the court could not admit him to bail till farther light was thrown upon the buſineſs.

SETTLEMENT

SETTLEMENT BY PAYING PUBLIC TAXES.

A PERSON who is rated in one parish, and resides in another, does not by paying the rate, gain a settlement in either. This was decided in *the K.* v. *the Inhabitants of St. Michael, at Thorn in Norwich, Hil.* 36 *Geo. III.* The sessions, on an appeal, confirmed an order of two justices for the removal of a widow and her family, from *Swanton Novers* in *Norfolk*, to the parish of *St. Michael* at *Thorn*, in the city of *Norwich*, subject to the opinion of the court, on a case which stated; that previous to the year 1793, the late husband of the pauper was settled in *Swanton Novers*; that in 1793 he was an excise officer, and resided in the parish of *St. Michael's* at *Thorn in Norwich*, and, during his residence there, was assessed for his salary to the land tax, in the parish of *St. Gregory* in *Norwich*, and which assessment was paid by the collector of excise; that it has been the custom in *Norwich*, to assess all the excise officers in the parish of *St. Gregory*, and not within the parishes where they respectively reside: that the parish of *St. Gregory* was the only parish which was relieved by the payment of the assessments, for the salaries of excise officers within the city; that the pauper's late husband never resided in the parish of *St. Gregory*. By lord *Kenyon* Ch. J. the single question in this case is whether the pauper's husband gained a settlement under the statute of *Wil. & Mar.* in the parish of *St. Michael* at *Thorn*, to which the widow was removed. That statute says that any person *who shall inhabit in any town or parish, and be charged with and pay his share towards* the public taxes of *the said town or parish*, shall thereby obtain a settlement. In this case the pauper's husband lived in one parish, and was charged to the land tax in another; therefore this does not come within the statute of *William.*— *Grose* J. concurred, and *Lawrence* J. said a settlement by being rated was substituted for public notice: but it is no notice to the parish of *St. Michael* that his person was rated in the parish of *St. Gregory*. Both orders quashed. 6 *Durnf. & East.* 536.

37 *G. III. c.* 90. *An Act for granting to His Majesty certain Stamp Duties, and for better securing the Duties on Certificates to be taken out by Solicitors, Attornies, &c.*
[22d *June* 1797.]

BY the 37 *G. III. c.* 90. it is enacted that there shall be levied throughout *Great Britian*, upon every skin, or piece of vellum or parchment, or sheet or piece of paper, on which any of the matters herein-after mentioned shall, after the 5th of *July* 1797, be engrossed, printed, or written, the respective stamp duties following: *viz.* Preamble. From *July* 5, 1797, the following stamp duties to be paid:

Any entry, minute, or memorandum, of any admission into any corporation or company in the court book, roll, or record, of such corporation or company, four shillings: On admission into a corporation, or company,

Any admission into any of the inns of court, or chancery, four pounds: Inns of court,

Any admission into any of the four inns of court, the further sum of four pounds two shillings over and above the said last mentioned four pounds:

Any admittance, or instrument for admitting, of any fellow of the college of physicians, or of any attorney, clerk, advocate, proctor, notary, or other officer in any court in *Great Britain*, (not being an annual officer in the court of any corporation or inferior court, whose office is under the value of ten pounds *per annum* in salary, fees, and perquisites), eight pounds: and on admission of physicians, an attorney, &c. in any court.

Any agreement for which six shillings and one shilling are charged by two acts of 23 and 35 *G. III.* three shillings:

Any award, five shillings: Awards.

Any beneficial warrant or order under the sign manual of His Majesty, twelve shillings and six-pence: Beneficial Warrants, &c.

Any bill of exchange, draft, or order for the payment of money on demand, for which any stamp duty is charged by 31 *G. III.* where the sum expressed shall amount to forty shillings and not exceed five pounds five shillings, one penny; and where it shall exceed five pounds five shillings and shall not exceed thirty pounds, two-pence; and where it shall exceed thirty pounds and not exceed fifty pounds, three-pence; and where it shall exceed fifty pounds and not exceed one hundred pounds, four-pence; and where it shall exceed one hundred pounds and not exceed two hundred pounds, six-pence: Bills of exchange, &c. payable on demand.

Bills of exchange, &c. payable otherwise than on demand.

Any bill of exchange, draft, or order, payable otherwise than on demand, where the ſum ſhall amount to forty ſhillings and not exceed thirty pounds, two-pence; and where it ſhall exceed thirty pounds and not exceed fifty pounds, three-pence; and where it ſhall exceed fifty pounds and not exceed one hundred pounds, four-pence; and where it ſhall exceed one hundred pounds and not exceed two hundred pounds, ſixpence:

Bills exceeding 200l.

Any bill of exchange whatſoever, where the ſum ſhall exceed 200*l.* eight-pence:

Bills of lading.

Any bill or note of landing which ſhall be ſigned for any goods or merchandizes to be exported, one ſhilling:

Bonds.

Any bond given for money, the amount whereof ſhall not exceed 100*l.* three ſhillings; where it ſhall exceed 100*l.* and not amount to 500*l.* ten ſhillings; where it ſhall be of the value of 500*l.* or upwards, fifteen ſhillings; where it ſhall be of the value of 1000*l.* or upwards, the further ſum of ten ſhillings; where it ſhall be of the value of 2000*l.* or upwards, the further ſum of one pound; where it ſhall be of the value of 5000*l.* or upwards, the further ſum of two pounds:

Bonds.

Any bond not hereby otherwiſe charged, except bail bonds, and aſſignments thereof, and except bonds exempted from the duties on ſtamped vellum, parchment, and paper, by 32 *G. III.* for the relief of the coaſt trade of *Great Britain*, and for exempting certain coaſt documents from ſtamp duties; and alſo except bonds given by executors and adminiſtrators, where the eſtate to be adminiſtered ſhall not exceed twenty pounds; and bonds to be given by the widow of any common ſoldier or ſeaman dying in His Majeſty's ſervice, on obtaining any probate of a will, or letters of adminiſtration of any eſtate, three ſhillings:

Certificate for drawbacks.

Any certificate or debenture for drawing back any cuſtoms or duties, or any part of any cuſtoms or duties, in reſpect of the reſhipping or exporting of any goods or merchandizes from *Great Britain*, two ſhillings:

Collations, &c. to benefices.

Any collation to be made by any archbiſhop, or biſhop, or any preſentation or donation which ſhall paſs the great ſeal, or which ſhall be made by any patron, of or to any benefice, or eccleſiaſtical promotion, ſix pounds:

Any

Any conveyance, ſurrender of grants or offices, releaſe, or other deed, which ſhall be enrolled of record in any court, or by any cuſtos rotulorum, or clerk of the peace, ten ſhillings: Deeds enrolled of record.

Any copy of any will, three-pence: Copies of wills.

Any copy, purporting to be a true or atteſted copy, of any indenture, leaſe or other deed, or any part thereof, for the ſecurity or uſe of any perſon, other than the perſon being entitled to the cuſtody of ſuch indenture, *&c.* ſix ſhillings and eight-pence: Copies of deeds.

Any diſpenſation to hold *two* eccleſiaſtical dignities or beneſices, or *both* a dignity and beneſice, or any other diſpenſation or faculty, from the archbiſhop of *Canterbury*, or the maſter of the faculties, ten pounds: Diſpenſations.

Any exemplification that ſhall paſs the ſeal of any court, one pound: Exemplifications.

Any grant or letters patent under the great ſeal, or the ſeal of the duchy or county palatine of *Lancaſter*, or of any honour, dignity, promotion, franchiſe, liberty, or privilege, to any perſon, body politick or corporate, or any exemplification of the ſame, eight pounds: Grants or letters patent.

Any grant from His Majeſty, of any ſum exceeding 100*l.* which ſhall paſs the great ſeal, or privy ſeal (not directed to the great ſeal), ſix pounds: Grants paſſing the great or privy ſeal.

Any grant of lands in fee, leaſe for years, or other grant of profit not herein particularly charged, that ſhall paſs the great ſeal, the ſeal of the exchequer, the ſeal of the duchy or county palatine of *Lancaſter*, or privy ſeal, (not directed to the great ſeal), ſix pounds: Grants paſſing the great ſeal, *&c.*

Any grant of any office or employment above 100*l.* *per annum*, ſix pounds; which value ſhall be calculated on the amount of the ſalary, fees, and perquiſites appertaining to ſuch office or employment within the year: Grants of office.

Any indenture, leaſe, or other deed, not hereby otherwiſe charged, for which a ſtamp duty of one ſhilling is payable by 35 *G. III.* (except indentures for binding pariſh or charity children apprentices), three ſhillings: Indentures, leaſes, *&c.*

Any inſtitution or licence that ſhall paſs the ſeal of any archbiſhop or biſhop, chancellor or other ordinary, or any eccleſiaſtical court in *England*, or any writ or inſtrument for the like purpoſe, with any ſuch inſtitution or licence that ſhall be paſſed or made by any preſbytery or other ſpiritual power in *Scotland*, fifteen ſhillings: Inſtitutions or licences.

Inventories of goods, Furniture, &c.

Any inventory or catalogue of any furniture, goods, or effects, made with reference to any agreement, or for the ſecurity of any perſon not hereby otherwiſe charged, two ſhillings and ſixpence:

Letters of Mart.

Any letters of mart, fifteen ſhillings:

Matriculations.

Any matriculation of a perſon in either of the two univerſities in *England*, four ſhillings:

Pardons.

Any pardon (except the general circuit or *Newgate* pardons) for any crime, or of any ſum of money or forfeiture, or any warrant of reprieve or relaxation from any pecuniary fine exceeding 100*l.* or from any corporal puniſhment, ſix pounds:

Paſſports.

Any paſſport, one ſhilling:

Probates.

Any probate of a will or letters of adminiſtration for any eſtate of or above the value of 300*l.* two pounds and ten ſhillings; where it is of or above the value of 600*l.* the further ſum of one pound ten ſhillings; and where it is of or above the value of 1000*l.* the further ſum of two pounds; and where it is of or above the value of 2000*l.* the further ſum of four pounds; and where it is of or above the value of 5000*l.* the further ſum of five pounds; and where it is of or above the value of 10,000*l.* the further ſum of five pounds:

Notes to bearer on demand re-iſſuable where firſt iſſued.

Any promiſſory or other note for money to the bearer on demand, which may be re-iſſuable from time to time after Payment at the place where the ſame was firſt iſſued, but not otherwiſe, where the ſum expreſſed therein, ſhall amount to forty ſhillings, and not exceed five pounds five ſhillings, one penny; and where it ſhall exceed five pounds five ſhillings, and not exceed thirty pounds, two-pence; and where it ſhall exceed thirty pounds, and not exceed fifty pounds, three-pence; and where it ſhall exceed fifty pounds, and not exceed 100*l.* four-pence; and where it ſhall exceed 100*l.* and not exceed 200*l.* ſix-pence:

Notes to bearer on demand re-iſſuable at any place.

Any promiſſory or other note for money to the bearer on demand, which may be re-iſſued from time to time after any payment at the ſame place or any other place than where the ſame was firſt iſſued, where the ſum expreſſed therein ſhall amount to forty ſhillings, and ſhall not exceed five pounds five ſhillings, two-pence; and where it ſhall exceed five pounds five ſhillings, and not exceed thirty pounds, four-pence:

Any

Any promiſſory or other note payable otherwiſe than to the bearer on demand, where the ſum expreſſed therein, ſhall amount to forty ſhillings, and not exceed thirty pounds, two-pence; and where it ſhall exceed thirty pounds, and not exceed fifty pounds, three-pence; and where it ſhall exceed fifty pounds, and not exceed 100*l.* four-pence; and where it ſhall exceed 100*l.* and not exceed 200*l.* ſixpence: Notes to bearer payable otherwiſe than on demand.

Any promiſſory or other note payable on demand, or otherwiſe, where the ſum expreſſed therein, ſhall exceed 200*l.* eight-pence: Notes exceeding 200l.

Any proteſt or other notarial act, two ſhillings: Proteſts.

Any recognizance, ſtatute ſtaple, or ſtatute merchant, ten ſhillings: Recognizances.

Any regiſter, entry, teſtimonial, or certificate of any degree taken in either of the two univerſities in *England*, two pounds: Regiſters, &c. of degrees.

Any regiſter, entry, teſtimonial, or certificate of any degree in any inn of court, fourteen pounds:

Any ſurrender of, or admittance to, any copyhold land or tenement, (except ſuch as ſhall not exceed the yearly value of twenty ſhillings; and except the original ſurrender to the uſe of a will), or any grant or leaſe by copy of court roll, or any other copy of the court roll of any honour or manor, (other than the court roll or book wherein the proceedings of the court are entered and enrolled), three ſhillings: Surrenders of, and admittance to copyholds.

A copy of any ſurrender of, or admittance to, any cuſtom right, or tenant right eſtate, not being copyhold, which ſhall paſs by ſurrender and admittance, or by admittance only, and which ſhall not paſs by deed (except ſuch cuſtom right or tenant right eſtates as ſhall not exceed the yearly value of twenty ſhillings,) three ſhillings: Copy of ſurrender of, or admittance to, eſtates not copyhold.

Any transfer of ſtock in any company, ſociety, or corporation, (except the companies of the bank of *England*, and of the company of *Great Britain* trading to the *South Seas*), ten ſhillings: Transfer of ſtock,

Any writ of covenant for levying a fine, or writ of entry for ſuffering a common recovery, fifteen ſhillings: Writs for levying fines, &c.

Any appeal from the courts of admiralty either in *England* or *Scotland*, the court of arches, or the prerogative courts of *Canterbury* or *York*, ſix pounds: Appeal from the courts of admiralty.

Any

Anſwer in courts of admiralty, &c. Any anſwer exhibited in the courts of admiralty or cinque ports, three ſhillings:

Libel in ditto. Any libel, allegation, depoſition, or inventory exhibited in the courts of admiralty or cinque ports, two ſhillings and ſixpence:

Copy of citation, &c. A copy of any citation, monition, or anſwer, made in the courts of admiralty or cinque ports, three ſhillings.

Copy of libel &c. in ditto. A copy of any libel, allegation, depoſition, or inventory, exhibited in the courts of admiralty or cinque ports, two ſhillings and ſixpence:

Perſonal decree in ditto. Any perſonal decree, warrant, or monition, in any court of admiralty or the cinque Ports, or any copy thereof, five ſhillings:

Sentence of courts of admiralty, &c. Any ſentence given in the courts of admiralty, in *England* or *Scotland*, or the cinque port, exerciſing admiralty juriſdiction, or any attachment made out of the ſaid courts of admiralty, or any relaxation of any ſuch attachment, ten ſhillings:

Sentence in ditto. Any ſentence or final decree exhibited in the courts of admiralty or cinque ports, or copy thereof, two ſhillings:

Surrenders in *Scotland*. Any principal or original inſtrument of ſurrender or reſignation of any meſſuages, houſes, lands, and other heretable rights, to be made to any perſons who are the ſuperiors thereof, or to any city, town, burgh, or corporation, or to any magiſtrates or others who have power to receive ſuch ſurrenders or reſignations in *Scotland*, four ſhillings and nine-pence:

Charters, &c. in ditto. Any charter or reſignation, confirmation, *novo damus*, or charter, upon apprizing or adjudication made or granted by ſuch ſuperior or others as aforeſaid in *Scotland*, four ſhillings and nine-pence:

Retours of ſervice, &c. in ditto. Any principal or original retour of any ſervice of heirs, or any precept of *clara conſtat* of lands or tenements, holding of any ſubject in *Scotland*, four ſhillings and nine-pence:

Saiſines in ditto. Any principal or original ſaiſine taken or following upon any mortgage, wadſet, heretable bond, alienation or diſpoſition, or upon any charter precept of *clare conſtat*, retours, appriſings, or adjudications of lands or tenements holding of any ſubject as aforeſaid in *Scotland*, four ſhillings and nine-pence:

Any

Any principal or original inſtrument of ſurrender or reſignation, ſervice, or cognition of heirs, charter of ſaiſine of any houſes, lands, &c. holding burgage, or of burgage tenure, in *Scotland*, four ſhillings and nine-pence: Surrenders of burgage tenure, &c. in *Scotland*.

II. And be it further enacted, That, after the 5th of *July*, 1797, there ſhall be levied, throughout *Great Britain*, for the uſe of His Majeſty, the duties following: *viz.* From *July* 5, 1797, the following duties to be paid in *Great Britain*:

For every newſpaper, or paper containing public news, intelligence, or occurrences, printed in *Great Britain*, to be diſperſed, whether it be contained in half a ſheet or any leſs piece of paper, or any paper larger than half a ſheet, one penny halfpenny: Newſpapers 1*d.* 2*q.*

For every almanack or calendar for one year, four-pence. Almanacks 4*d.*

III. Provided, That nothing herein ſhall be conſtrued to extend to charge any foreign bills of exchange, drawn in ſets according to the cuſtom of merchants, with any additional duty higher than after the following rate; *viz.* where the ſum expreſſed in ſuch bills ſhall not exceed 100*l.* there ſhall be charged an additional duty of two-pence; and where it ſhall exceed 100*l.* and ſhall not exceed 200*l.* an additional duty of three-pence; and where it ſhall exceed 200*l.* an additional duty of four-pence: Provided that every bill of each ſet ſhall be charged, and every ſuch bill is hereby declared to be chargeable, with the like additional duty according to the rate above mentioned. Duties for ſets of foreign bills.

IV. And the duties charged on any of the matters and things herein mentioned, on which any former duty is by law payable, ſhall be paid over and above the duties payable on the ſame, on and immediately before the paſſing of this act; and the ſaid duties hereby granted ſhall be under the management of the commiſſioners appointed to manage the duties on ſtamped vellum, &c. who, or the major part of them, are hereby required and empowered to employ the neceſſary officers for that purpoſe; and in order to denote any of the ſeveral duties payable by virtue of this act, whenever they ſee occaſion to uſe ſuch ſtamps as ſhall have been heretofore provided, to denote former duties on ſtamped vellum, &c. or to cauſe new ſtamps to be provided, and alſo the duties granted by this act, and alter or renew the ſame from time to time, and to do all other things neceſſary to be done Duties to be paid above former duties.

done for putting this act in execution, in as full and ample a manner as they are authorized to put in execution any former law concerning ſtamped vellum, &c.

Penalty of death for counterfeiting ſtamps, &c.

V. And if any perſon ſhall counterfeit or forge, or cauſe to be counterfeited or forged, any ſtamp directed to be uſed by this act, made, or uſed, for denoting the duties by this act granted as aforeſaid, or ſhall counterfeit the impreſſion of the ſame, with intent to defraud His Majeſty, or ſhall utter, any parchment, &c. liable to any ſtamp duty by this act impoſed, with ſuch counterfeit ſtamp, knowing it to be counterfeit, or ſhall uſe any ſtamp directed to be uſed by this act, with intent to defraud His Majeſty, then every perſon ſo offending, ſhall be judged a felon, and ſuffer death, without benefit of clergy.

Powers of acts in force at paſſing this act, to extend to the duties before mentioned.

VI. Be it further enacted, That all powers, proviſions, &c. and all other matters preſcribed or appointed by any act in force at the paſſing of this act, relating to the ſtamp duties on vellum, &c. (and not hereby altered), ſhall (as far as they are reſpectively applicable) be of full force with relation to the other duties herein-before mentioned, and ſhall be put in execution for the raiſing, levying, &c. the ſaid additional and other duties, as fully, as if the ſame had ſeverally been hereby re-enacted with relation to the ſaid additional and other duties.

How to calculate the number of ſtamps to be put on indentures, &c.

VII. It is further enacted, That the number of ſtamps required to be put on any ſkin, or piece of vellum or parchment, or piece of paper on which any indenture, leaſe, bond, or other deed hereby charged with the duty of three ſhillings, or any agreement hereby charged with any duty, ſhall be engroſſed, written, or printed, ſhall, after the paſſing of this act, be calculated according to the number of common law ſheets, each common law ſheet containing ſeventy-two words, of which ſuch indenture, leaſe, bond, or other deed, together with every ſchedule or inſtrument annexed unto or indorſement made on the ſame, ſhall conſiſt in manner following; *viz.* where the quantity of words of which any indenture, leaſe, bond, &c. ſhall conſiſt as ſhall not exceed fifteen ſuch common law ſheets, one or more ſtamp or ſtamps to denote the value of all the duties charged thereon by any former act or acts of parliament, and this act; and where the quantity of words ſhall exceed fifteen common law ſheets, then progreſſively one or more further ſtamps of

of the like value for every further entire quantity of fifteen ſuch common law ſheets of which any ſuch indenture, leaſe, &c. ſhall conſiſt: provided that if, after ſo calculating the words, there ſhall remain any number of words leſs than fifteen other common law ſheets, no further ſtamp ſhall be required for ſuch exceſs above the number ſo calculated.

How to calculate the number of ſtamps to be put on copies of indentures, &c.

VIII. And the number of ſtamps which ſhall be required to be put on any ſkin, &c. on which any copy, purporting to be a true or atteſted copy, of any indenture, leaſe, &c. hereby charged with duty, ſhall be printed or written, ſhall be calculated in manner following; *viz.* where the quantity of words ſhall not exceed ten ſuch common law ſheets as aforeſaid, one ſtamp as aforeſaid; and where the quantity of words ſhall exceed the number of ten common law ſheets, then progreſſively one further ſtamp as aforeſaid for every entire further quantity of ten common law ſheets of which ſuch copy ſhall conſiſt: provided that if, after calculating the words, there ſhall remain any number of words leſs in quantity than ten other common law ſheets, no further ſtamp ſhall be required for ſuch exceſs above the number ſo calculated.

Proviſions of 37 *G. III. c.* 19, to extend to this act,

IX. It is further enacted, that all the proviſions, rules, and matters, preſcribed by an act, for the more effectually ſecuring the ſtamp duties on indentures, leaſes, &c. and not hereby altered, ſhall be extended for the ſtamping ſuch indentures, leaſes, &c. according to the true intent and meaning of this act.

and if any perſon ſhall neglect to bring inſtruments to be ſo ſtampt within the time allowed by the recited act, he ſhall forfeit 20l.

And if any attorney, ſolicitor, or other perſon, ſhall print, or write, or cauſe to be printed, or written, any agreement, &c. not duly ſtamped, according to the directions of this act, and ſhall neglect to bring it to be duly ſtamped within the time directed by the ſaid act paſſed in this ſeſſions, every ſuch attorney, ſolicitor, or other perſon, ſhall forfeit twenty pounds, to be recovered and applied as any other penalty impoſed by the ſaid act; and no ſuch agreement, &c. ſhall be pleaded or given in evidence, or be good, or available, in any manner whatever, unleſs it ſhall be ſtamped as required by this act.

Perſons adminiſtering perſonal eſtates without proving

X. It is further enacted, That every perſon who ſhall adminiſter the perſonal eſtate of any perſon dying after the paſſing of this act, or any part thereof, without proving

the will, or taking out letters of administration within six months after the death of the party, to forfeit 50l.

the will of the deceased, or taking out letters of administration of such personal estate, within six calendar months after the death of the person so dying, shall forfeit fifty pounds, to be recovered in His Majesty's court of exchequer at *Westminster*, for offences committed in *England*, or in His Majesty's court of exchequer in *Scotland*, for offences committed in *Scotland*, and one moiety of such forfeiture shall, if sued for within six calendar months, be to His Majesty, and the other to the person who shall inform or sue.

For every copyhold tenement of 20s. *per ann.* mentioned in any surrender, &c. a distinct stamp duty shall be charged.

XI. And be it enacted, That in respect of each and every copyhold tenement of twenty shillings *per annum*, or upwards, mentioned in any surrender, admittance, or copy of court roll, of any honour or manor, and each and every custom right or tenant right tenement, not being copyhold, (of the value before mentioned), mentioned in any surrender, admittance, or instrument of admittance, whereupon a several fine shall be due or payable to the lord of any manor, or a several fee shall be demanded or received by any steward, or deputy steward, of such manor, a distinct and several stamp duty shall be charged according to the amount of all the duties imposed thereon by this or any former act or acts.

If any officer of a copyhold court, &c. shall receive a fine for any surrender, &c. without demanding the duty, he shall forfeit 20l. &c.

XII. It is further enacted That if any steward or other officer of any copyhold court, or of any customary or tenant right court, not being copyhold, shall demand or receive, from any person, any fine or fee for any surrender or admittance of or to any copyhold tenement, or for any grant or lease by copy of any court roll, or for any other copy of the court roll of any manor, or for any surrender or admittance, or instrument of admittance, to any custom right or tenant right tenement, not being copyhold, without demanding and receiving the stamp duty in respect of each distinct tenement aforesaid, then every such steward or other officer shall, for every such offence, forfeit twenty pounds, and the duties which shall be due thereon, whether the same shall have been so received by the steward or other officer, or not, shall be a debt to His Majesty, of the steward or officer who ought to have received the same; and if the same shall not be received by such steward, &c. then the said duties shall also be a debt to His Majesty, of the person to whom any estate

as

as aforeſaid ſhall paſs by force of any ſurrender, admittance, or copy, or inſtrument of admittance, which ſhall not be ſo ſtamped as aforeſaid.

XIII. And if any ſteward or other officer of any manor ſhall receive the duties on any ſuch ſurrender, admittance, inſtrument of admittance, or copy, and ſhall neglect to purchaſe the proper ſtamps for the ſame, and to pay the duty ſo received to the officer appointed by the commiſſioners of His Majeſty's ſtamp duties for ſuch purpoſe, for three calendar months after receiving the ſame, every ſuch ſteward, &c. ſhall for every ſuch offence forfeit five pounds, and double the duty which ſhall not be ſo paid by him within the time.

If an officer ſhall receive the duties, and neglect to pay them for three months, he ſhall forfeit 5l. and double the duty.

XIV. It is further enacted, That it ſhall be lawful for any perſons who ſhall, on the fifth of *July* 1797, have in their poſſeſſion any vellum, parchment, or paper, ſtamped or marked, uſed to denote any of the duties now payable by law on ſtamped vellum, &c. by virtue of any act in force before the paſſing of this act, and upon which vellum, &c. any duty is hereby impoſed in addition to the duty now payable, at any time within the ſpace of ſixty days, for perſons reſiding in *England*, and of four calendar months for perſons reſiding in *Scotland*, to be computed from the fifth day of *July* 1797, to bring or ſend ſuch vellum, &c. to the ſaid commiſſioners, at their ſaid head office, who, &c. are hereby required, on payment of the duties by this act impoſed, to the receiver general of the ſaid duties, or to ſome perſon authorized, to cauſe ſuch vellum, &c. to be duly ſtamped with the proper ſtamp, to denote the payment of the reſpective duties hereby impoſed; or at the election of the perſon bringing ſuch vellum, &c. to cauſe the ſame to be cancelled, and other vellum, &c. to be ſtamped with the proper ſtamps of the like value with the amount of the ſtamps ſo cancelled, and of the duties ſo paid, without demanding or taking any conſideration (other than the duty hereby impoſed) for the ſame; and all vellum, &c. ſtamped by virtue of any act now in force, on which any thing ſhall be printed or written, after the fifth of *July* 1797, which ſhall not be brought within the reſpective times aforeſaid to the ſaid head office, ſhall be of no other effect than if the ſame had not been ſo ſtamped; and the matters and things which ſhall after the fifth of *July* 1797, be printed or written

Perſons having on *July* 5, 1797, vellum, &c. ſtampt with the old duties, may, have it ſtampt with the proper ſtamp, or exchanged;

but if not ſo brought, inſtruments written thereon to be of no effect.

written thereon, ſhall be of no other effect than if they had been printed or written on unſtamped vellum, &c.

No note allowed by 31 *G. III. c.* 25, to be iſſued again, ſhall, after *July* 5, be to iſſued till properly ſtampt, &c.

XV. And be it further enacted, That no promiſſory or other note, which by the ſaid 31 *G. III.* is allowed to be again iſſued under certain Regulations therein contained, ſhall, after the ſaid fifth of *July* 1797, be again iſſued after payment thereof, until it ſhall have been brought to the ſaid head office to be ſtamped in the manner directed by this act; and the ſaid commiſſioners are hereby required to ſtamp the ſame, on payment of the duty by this act impoſed, on proof on oath or affirmation before the ſaid commiſſioners, (which oath or affirmation the ſaid commiſſioners, or two of them, are hereby authorized to adminiſter), that the ſame hath not been, after payment thereof, again iſſued ſince the ſaid fifth of *July* 1797; and any ſuch note which ſhall be firſt iſſued or negociated after the fifth of *July* 1797, and which may be after any payment thereof according to the regulations of the ſaid act again iſſued, being alſo firſt properly ſtamped to denote the duty by this act impoſed, may be again iſſued from time to time in the manner allowed by the ſaid act; and all rules, and regulations, preſcribed or impoſed by the ſaid act, with reſpect to the ſtamping ſuch promiſſory or other notes, in order to iſſue the ſame from time to time, or with reſpect to the iſſuing, or negociating, or cancelling ſuch notes, after payment thereof, ſhall be put in practice with reſpect to the ſecuring the duties by this act impoſed.

Regulations of the ſaid act to extend to this.

From *July* 5, 1797, certain additional duties on gold and ſilver plate.

XVI. It is further enacted, That, after the ſaid fifth of *July* 1797, there ſhall be levied for the uſe of His Majeſty, the rates or duties following; *viz.* upon all gold plate imported or wrought within *Great Britain*, and which ſhall or ought to be touched, aſſayed, and marked in *Great Britain*, an additional duty of eight ſhillings for every ounce troy, and in proportion for any greater or leſs quantity; and upon all ſilver plate, which, after the fifth of *July* 1797, ſhall be imported or wrought within *Great Britain*, and which ſhall or ought to be touched, aſſayed, and marked in *Great Britain*, an additonal duty of ſixpence for every ounce troy; and in proportion for any greater or leſs quantity.

Duties to be under the management of the

XVII. And the duties hereby impoſed on gold and ſilver plate wrought in *Great Britain*, ſhall be under the management

management of the ſaid commiſſioners of ſtamp duties; and the ſame ſhall be levied, recovered, anſwered, and paid, in ſuch and the like manner, by which the duties on gold and ſilver plate wrought in *Great Britain*, and granted by 34 *G. III.* commiſſioners for ſtamps.

XVIII. It is further enacted, That the duties hereby impoſed on gold or ſilver plate imported into this kingdom, ſhall be under the management of the commiſſioners of cuſtoms in *England* and *Scotland* reſpectively, and ſhall be managed, aſcertained, raiſed, levied, collected, and paid, in ſuch manner, and in and by any and either of the means, ways, and methods, by which the duties of cuſtoms on gold and ſilver wrought plate imported, impoſed by an act paſſed in the 27 *G. III.* were or might be, and the ſaid goods, ſo by this act made chargeable with a duty on importation, ſhall be liable to all the conditions, regulations, rules, reſtrictions, and forfeitures, to which the like goods, &c. were by any act in force before the paſſing of this act. Duties on gold and ſilver plate imported.

XIX. Be it further enacted, That after the fifth of *July* 1797, there ſhall be levied, throughout *Great Britain*, for the uſe of His Majeſty, the yearly ſum of ſixpence over and above the yearly ſum of one ſhilling and ſixpence now payable for every ſum of 100*l.* and ſo in proportion for a greater or leſs ſum, that ſhall be inſured by any perſon by any policy of inſurance for inſuring houſes, furniture, &c. from loſs by fire. From *July* 5, 1797, an additional duty of 6*d. per cent.* to be paid for inſurances,

XX. And the ſaid duties on inſurances, ſhall be under the management of the commiſſioners of ſtamp duties, and ſhall be levied, recovered, &c. by the like means, by which the duties of one ſhilling and ſixpence, granted on the like inſurances by 22 *G. III.* are levied, recovered, &c. and ſhall be ſubject to all the like rules and regulations, as the former duties are liable to. which duty ſhall be under the management of the commiſſioners for ſtamps.

XXI. All the monies ariſing by the ſeveral duties before mentioned, except thoſe on gold and ſilver plate imported, ſhall be paid, from time to time, into the hands of the receiver general of the duties on ſtamped vellum, &c. who ſhall pay the ſame, the neceſſary charges being deducted, into the receipt of the exchequer, at ſuch time, and in ſuch manner, as the duties on ſtamped vellum, &c. are directed to be paid; and be made part of the conſolidated fund. Duties, except on gold and ſilver plate imported, to be paid to the receiver general for ſtamps.

XXII.

Duties to be an addition to the revenue, for defraying the encreaſed charge occaſioned by any loan of this ſeſſion, &c.

XXII. Provided always, that the monies ariſing from the ſeveral duties hereby granted or ſo much thereof as ſhall be ſufficient, ſhall be deemed an addition made to the revenue, for the purpoſe of defraying the encreaſed charge occaſioned by any loan made or ſtock created, or to be created, by virtue of any act paſſed, or to be paſſed, in this ſeſſion of parliament.

Preſent duties on policies for inſurances from loſs by fire, repealed from *July* 5, 1797,

XXIII. And whereas certain ſtamp duties of ſix ſhillings or of eleven ſhillings reſpectively, are charged by ſeveral acts on every ſkin or piece of vellum or parchment, or ſheet or piece of paper, on which ſhall be printed or written, any policy of aſſurance: and, whereas it is expedient that the ſaid duties ſhould be repealed, and other duties granted in lieu thereof, be it further enacted, that all the duties impoſed by any act on and immediately before the paſſing of this act, on every ſkin or piece of vellum, &c. on any policy of inſurance, ſhall, after the fifth of *July* 1797, ceaſe and determine, ſave and except any arrears of the ſaid ſeveral duties which may, on the fifth of *July* 1797, remain unpaid.

and the duties following to be paid:

XXIV. It is further enacted, That, after the fifth of *July* 1797, there ſhall be levied and paid for the uſe of His Majeſty, throughout *Great Britain*, the duties hereinafter next mentioned; *viz.*

Where the ſum ſhall not amount to 1,000*l.* 3*s.*; and for 1,000*l.* and upwards, 6*s.*;

For every ſkin, or piece of vellum, &c. on which ſhall be written or printed, any policy of inſurance for inſuring houſes, furniture, &c. from loſs by fire, where the ſum inſured thereon ſhall not amount to 1000*l.* three ſhillings; and where it ſhall amount to 1000*l.* or upwards, ſix ſhillings:

which ſhall be levied as the repealed duties.

Which ſeveral duties ſhall be levied in like manner as the duties hereby repealed were, on and immediatly before the paſſing of this act, or any duties hereby granted, may be levied by virtue of this act.

Duties on policies to be paid into the exchequer as other ſtamp duties.

XXV. Provided always, That the monies ariſing from the ſaid ſeveral rates and duties hereby granted on policies ſhall be paid into His Majeſty's receipt of exchequer, and made part of the conſolidated fund.

25 *G. III. c.* 80, recited.

XXVI. And whereas, by the 25 *G. III.* intituled, *an act for granting to His Majeſty certain duties on certificates, to be taken out by ſolicitors, attornies, and others, practiſing in certain courts of juſtice in* Great Britain; *and certain other duties with reſpect to warrants, mandates, and authorities,*

to

to be entered or filed on record, as therein mentioned; certain duties were granted on certificates to be taken out by any ſolicitor, attorney, notary, proctor, agent, or procurator, of his admiſſion, enrollment, or regiſter, in any of the courts therein mentioned: and whereas, for avoiding frauds, it is expedient that the certificates ſhall be taken out only at the head office of ſtamps; it is therefore further enacted, That, after the firſt of *November* 1797, every perſon admitted, ſworn, enrolled, or regiſtered, a ſolicitor, attorney, notary, proctor, agent, or procurator, in any of His Majeſty's courts at *Weſtminſter*, or in any eccleſiaſtical court, or in any of the courts of admiralty or cinque ports, the great ſeſſions in *Wales*, or in any courts in the counties palatine, or in any other court in that part of *Great Britain* called *England* holding pleas, where the debt or damage ſhall amount to forty ſhillings or more, ſhall, annually, between the firſt of *November* and the end of *Michaelmas* term then next following, during ſuch time as he ſhall continue ſo to practiſe in any of the ſaid courts, or before ſuch perſon ſhall commence, carry on, or defend, any action or ſuit, or any proceedings in any of the ſaid courts, deliver in to the commiſſioners appointed to manage the duties on ſtamped vellum, parchment, and paper, or to their officer at the head office of ſtamps in *Middleſex*, a paper or note, in writing, containing the name and uſual place of reſidence of ſuch perſon; and thereupon, and upon payment of the duties by the ſaid act impoſed, according to the place of his reſidence deſcribed in ſuch paper or note, in writing, every ſuch perſon ſhall be entitled to a certificate, duly ſtamped, to denote the payment of the duty by the ſaid act impoſed, according to the place of reſidence deſcribed as aforeſaid; which certificate the ſaid commiſſioners, ſhall cauſe to be immediately iſſued, under the hand and name of the proper officer, in ſuch form as the ſaid commiſſioners ſhall deviſe.

From *Nov.* 1, 1797, every ſolicitor, &c. in the courts at *Weſtminſter*, and certain othercourts, ſhallannually deliver at the head office for ſtamps a note, containing his name and abode, in order to obtain a certificate.

XXVII. And every certificate ſo to be obtained, ſhall be entered in one of the courts in which the perſon deſcribed therein ſhall be admitted, enrolled, ſworn, or regiſtered, with the reſpective officer or officers of the ſaid courts, appointed by the ſaid act to grant certificates of enrolment, admiſſion, or regiſter, within the time herein-before preſcribed, or before ſuch perſon ſhall be permitted to practiſe as aforeſaid; and the ſaid reſpective officers

Certificates to be entered with the proper officer of the court.

officers ſhall, from time to time, upon payment of the fee of one ſhilling, enter in alphabetical order the names of the perſons deſcribed in ſuch reſpective certificates, together with the places of ſuch their reſidence as aforeſaid, and the reſpective dates of ſuch certificates, in books or rolls to be prepared for that purpoſe, to which books or rolls all perſons may at ſeaſonable times have free acceſs without fee or reward.

Books of entry may be inſpected *gratis*.

XXVIII. And every certificate iſſued by virtue of this act, between the firſt day of *November* in any year, and the end of the then next *Michaelmas* term, ſhall bear date on the ſecond of *November* in ſuch year; and every certificate iſſued at any other time, ſhall bear date on the day on which it ſhall be iſſued; and every ſuch certificate ſhall ceaſe and determine on the firſt day of *November* then next following.

When ſuch certificates ſhall bear date, and when determine.

XXIX. It is further enacted, That every certificate granted at any time before the firſt of *November* 1797, by virtue of the ſaid recited act, ſhall ceaſe on the firſt of *November* 1797, and any perſon who ſhall deliver any certificate granted after the firſt of *November* 1797, or to be granted before the firſt of *November* 1797, and then in force, to the ſaid commiſſioners at their ſaid office, or to any perſon appointed by them to receive the ſame, to be cancelled, ſhall be entitled to an allowance of duty in proportion to the period then unexpired of the time for which ſuch certificate was granted; which allowance the ſaid commiſſioners are hereby required to compute and pay to the perſon delivering ſuch certificate to be cancelled, and the ſame may be paid out of any duties in their hands, or if any of the perſons bringing any certificate to be cancelled, ſhall require a new certificate for the enſuing year, then to deduct the ſame out of the duties to be paid for ſuch new certificate.

Certificates granted before *Nov.* 1, 1797, ſhall ceaſe on that day; and ſuch certificates delivered to be cancelled.

XXX. And after the firſt of *November* 1797, if any perſon ſhall in his own name, or in that of any other perſon, ſue out any writ or proceſs, or commence, proſecute, or defend, any action or ſuit in any of the courts aforeſaid, in expectation of any gain, fee, or reward, or ſhall do any act in any of the ſaid courts as an attorney, ſolicitor, notary, proctor, agent, or procurator, of ſuch court, without obtaining a certificate in the manner herein-before

Penalty for acting after *Nov.* 1, 1797, without a certificate, or without entering it.

herein-before directed, or without entering the ſame in one of the courts aforeſaid, wherein ſuch perſon ſhall be admitted, enrolled, ſworn, or regiſtered, as ſolicitor, attorney, notary, proctor, agent, or procurator, or ſhall deliver in to any perſon at the ſaid head office, any account, containing a place of reſidence, contrary to the directions of the ſaid act of 25 *G. III.* with intent to evade the payment of the higher duties of five pounds, by the ſaid act impoſed, every ſuch perſon ſhall, for every ſuch offence, forfeit fifty pounds, and is hereby made incapable to proſecute any action or ſuit in any court of law or equity, for the recovering any fee, reward, or diſburſement, on account of proſecuting, carrying on, or defending any action, ſuit, or proceeding, or having proſecuted, carried on, or defended, any action, ſuit, or proceeding, or any matter or thing relating thereto, without ſuch certificate as aforeſaid.

From *Nov.* 1 1797, perſons neglecting to obtain certificates for a year incapable of practiſing; but they may be re-admitted on payment of the duty and penalty.

XXXI. And that every perſon admitted, ſworn, enrolled, or regiſtered, in any of the ſaid courts, who, after the firſt of *November*, ſhall neglect to obtain his certificate thereof, for the ſpace of one whole year, ſhall from thenceforth be incapable of practiſing in his own name, or in that of any other perſon, in any of the ſaid courts: provided always, that nothing herein contained ſhall be conſtrued to prevent any of the ſaid courts from re-admitting any ſuch perſon on payment of the duty accrued ſince the expiration of the laſt certificate obtained by ſuch perſon, and ſuch further ſum by way of penalty, as the ſaid court ſhall think fit to order.

Application of duties under 25 *G. III*, c. 80. from *Oct.* 10, 1797.

XXXII. It is further enacted, That after the tenth of *October* 1797, out of the monies ariſing from the rates and duties impoſed by the act of the 25th year aforeſaid, after the ſaid tenth of *October* 1797, the ſum of 3647*l.* 10*s.* being one-fourth part of 14,590*l.* the annual average produce for three years, ending the fifth day of *Auguſt* 1797, of the duties impoſed by the ſaid laſt mentioned act, ſhall, quarterly, on the fifth of *January*, the fifth of *April*, the fifth of *July*, and the tenth of *October*, in every year, during the period of ten years, be ſet apart from the remainder of the monies ariſing from the ſaid duties; which remainder ſhall, during the ſaid period of ten years, be paid into the receipt of his majeſty's exchequer, apart from all other branches of the public revenue.

For every newſpaper ſold at more than 6d. a diſcount allowed on the amount of all the duties.

XXXIII. And whereas it is expedient that a compenſation ſhould be paid to ſuch proprietors, printers and publiſhers of newſpapers, who ſhall not advance the price of of their papers beyond the amount of the duty impoſed thereon by this act; be it further enacted, That for every ſuch newſpaper, which ſhall be ſold at a price not exceeding ſixpence, there ſhall be paid an allowance, by way of diſcount, upon the amount of all the reſpective duties payable on newſpapers, by any act or acts in force on and immediately before the paſſing of this act, and alſo by this act, after the rate and in the manner herein-after mentioned; and that the ſaid allowance ſhall, in all caſes where the ſame ſhall be made, be in lieu of all former allowances directed to be made by any act or acts whatever.

If the proprietor or printer ſhall make it appear that a newſpaper has been, for 3 months, ſold for more than 4d. 2q. the diſcount may be allowed if the advance of price be no more than the new duty.

XXXIV. Provided always, That if the proprietors of any newſpaper, ſhall make it appear to the ſatisfaction of the ſaid commiſſioners, or any three of them, or any officer appointed by them, or any three of them, for ſuch purpoſe, that any newſpaper of which ſuch perſon is proprietor, hath been for three calender months, or longer, before the paſſing of this act, uſually ſold at a higher price than fourpence halfpenny for each newſpaper, it ſhall be lawful for the ſaid commiſſioners to make the like allowance as herein-after is mentioned to ſuch proprietors, who ſhall not advance the price of their papers above the uſual price as aforeſaid, more than the amount of the duty by this act impoſed thereon.

Perſons paying 10l. at any time for duty, to be entitled to a diſcount.

XXXV. Any perſon who ſhall bring to the head office of ſtamps, to be ſtamped with the reſpective duties impoſed on newſpapers, any paper commonly called *Single Demy Paper*, not exceeding in each ſheet thereof twenty-eight inches in length and twenty inches in breadth, to be ſtamped on each ſheet thereof; or any paper, commonly called *Double Demy Paper*, to be ſtamped on each half ſheet thereof, ſhall, on preſent payment at any one time of ten pounds or upwards, on account of the reſpective duties, be entitled, on demand, to an allowance, by way of diſcount, after the rate of 16*l. per centum per annum*, on the ſum ſo paid.

Commiſſioners to provide two

XXXVI. And it is further enacted, That the ſaid commiſſioners ſhall cauſe two ſtamps to be provided, to denote the

the duties payable on newſpapers, the one of which ſhall denote the diſcount which ſhall be allowed in purſuance of this act; and all ſuch paper which ſhall be brought to the ſaid head office to be ſtamped, on payment of the duties as aforeſaid, and whereupon the diſcount hereby directed to be allowed ſhall be demanded and paid, ſhall be ſtamped with the ſtamp herein-before directed to be provided to denote the diſcount to have been allowed; and all ſuch paper whereupon no diſcount ſhall be demanded and paid in purſuance of this act, ſhall be ſtamped with the other of the ſaid ſtamps: And if any perſon ſhall print, or cauſe to be printed, any newſpaper, without printing, or cauſing to be printed thereon, the full price at which the ſame ſhall be ſold, or ſhall ſell or expoſe to ſale, any ſuch newſpaper, at any greater price than the ſum printed thereon, or ſhall print, or cauſe to be printed, on any ſuch newſpaper, which ſhall be ſtamped with the ſtamp herein-before directed to denote the diſcount to have been allowed in purſuance of this act, any price exceeding the ſum allowed by this act; or ſhall ſell, or expoſe to ſale, any ſuch newſpaper, which ſhall be ſtamped with the ſaid ſtamp to denote the diſcount to be allowed as aforeſaid, at any price exceeding the ſum ſo allowed, every ſuch perſon ſhall, for every ſuch offence, forfeit twenty pounds.

Stamps, one denoting the diſcount to be allowed, and the other not.

Penalty of 20l. for not printing the full price on the newſpaper, or ſelling it at a greater price &c.

XXXVII. Provided always, That nothing herein ſhall be conſtrued to limit the price of any paper whereupon the allowance by this act granted ſhall not have been demanded and paid, nor to prevent any perſon, on preſent payment of the duties impoſed by any acts in force on and immediately before the paſſing of this act, from receiving the allowance of four pounds *per centum* thereon, in any caſe where the allowance by this act granted ſhall not be demanded and paid.

Where the allowance hereby granted is not demanded, act not to limit the price, nor to prevent the allowance of 4*l. per cent.*

XXXVIII. If any action or ſuit ſhall be commenced againſt any perſon for any thing done in purſuance of this act, it ſhall be within ſix calendar months, and ſhall be brought where the cauſe of action ſhall ariſe, and the defendant may plead the general iſſue.

Limitation of actions.

General iſſue.

CRIM. CON.

SHERIFF'S COURT.

Hicks's Hall, Clerkenwell, Sept. 8.

SAM. BODDINGTON, *v.* BENJ. BODDINGTON.

THIS court was held to aſſeſs the damages in an action brought by Samuel Boddington, Eſq. againſt Benjamin Boddington, Eſq. for criminal converſation with his wife, the defendant having withdrawn his plea of *Not Guilty* in the court of King's-Bench.

Mr. Erſkine, as counſel for the plaintiff, began by obſerving to the Jury, that they had been called upon to form an inquiſition in no common cauſe: they were to conſider of the injury received by a much-wronged gentleman, who charged the defendant with having committed adultery with his wife; and as the defendant had withdrawn his plea in the ſuperior courts, the fact itſelf was admitted; it was therefore for them to conſider of the defendant's circumſtances, and how far thoſe did or did not aggravate the caſe. From the diſpoſition of the times, he had to lament having been often called upon to exerciſe his profeſſion in cauſes of this nature; and their frequency was to be lamented not only in a moral point of view, and as they affected private happineſs, but alſo as they affected the intereſt of the public, and conſequently deſerved the ſevereſt cenſure.

In this light they muſt affect every conſiderate mind; for adultery brings on diſguſt to the children, and deprives them of that parental care which is neceſſary to act upon them as an example for their own conduct, in the performance of their duties in ſocial life. Brute animals, it was true, attended only to their young as long as nature taught them it was neceſſary, and then the feelings of parent and offſpring were extinguiſhed;—but with man it was far different; for he bearing a ſuperior part, it became him not to leave his ſucceſſion as an animal to be ſucceeded by an animal; but it was his duty to aid that plan and effect which were to benefit the univerſe.

Adultery deſtroys not only private happineſs, but the intereſt of ſociety, and would to God his obſervations could

could prevent its lamentable frequency. He ſhould, however, find his office eaſily performed if this was one of thoſe faſhionable intrigues where female forwardneſs preceded ſeduction; but ſorry was he to ſay, that it was mixed with almoſt unexampled wrongs to unfortunate individuals. Mr. Samuel Boddington, the plaintiff, was a moſt reſpectable merchant in the city of London, and the defendant was not only his partner, but one of his neareſt relations, their fathers being ſons of the ſame parents; united thus by trade, by conſanguinity, nothing could have interrupted their proſperity ſhort of an abandonment on one of their parts to vice. The plaintiff, at a proper age, was put under the care of a gentleman of the name of Morgan, who had alſo the tuition of two brothers of the lady who was thus involved in misfortunes,—he would call it a misfortune, for ſhe had, in a great meaſure, blotted out her guilt by ſorrow and contrition;—ſhe viſited Mrs. Morgan, and in conſequence the plaintiff became much enraptured with her, and well he might, for it was more the office of a poet than of an advocate, to deſcribe her beauty:—ſhe received his attentions, and a mutual fondneſs took place between them; when in the midſt of this ſcene of happineſs, ſhe was called upon by her parents to return:—her duty obeyed, and a final ſeparation ſeemed inevitable. The plaintiff was naturally diſtreſſed; ſhe embarked on board the ſhip, which he followed to the Downs, where finding her attachment was equal to his own, he haſtened to throw himſelf at the feet of his father, to implore he would endeavour to preſerve his happineſs. The fondneſs of the parent gave way, and he pervailed upon her guardians to let her remain, while they wrote over to her father at Madras, for his conſent to their marriage, which arrived in the ſpace of ten months, and they were married accordingly.

The father going out of buſineſs, the defendant came into partnerſhip with the plaintiff in a proſperous buſineſs, wherein they turned from 4 to 500,000 pounds per annum. Here he ſhrunk back from any further inveſtigation; for it would appear that the defendant had acted upon the moſt deliberate plan of ſeduction that had ever entered into the mind of the moſt vicious, and therefore he could not in this caſe hear any plea on the infirmities of mankind

mankind ſet up for mitigation; for it was not a man caught before he was aware, but one acting upon a ſlow and progreſſive ſyſtem. His connection in trade, and his near relationſhip, rendered him as one of the family, and perceiving this unfortunate lady was particularly fond of her children, he commenced his deſign by paying little attentions to, and ſhewing a fondneſs for them. Having thus wormed himſelf into her good opinion, after a time a ſickneſs followed, whether pretended or real was no matter, but he ſtated to her ſhe was the cauſe; and thus by degrees he alienated the huſband from her heart.

The plaintiff obſerving a change in his wife, reſolved to carry her out of the way, firſt to her mother at Bath, and then to ſome diſtant part of the country, thinking he perceived ſome improper attentions, but not having the ſmalleſt idea that at that time there was any thing criminal between them:—he had, however, told his wife his thoughts, and deſired ſhe would have no further communication with the defendant, which ſhe not only promiſed, but even told the defendant her reſolution, after having conſented to elope with him on the Tueſday before.

On the Thurſday the plaintiff and his wife ſet out for Bath, and, as if wiſhing to atone for his improper conduct, the defendant was particularly attentive on taking leave of the plaintiff, and, putting out his hand, expreſſed a hope that nothing might occur to break in upon his pleaſures; and this he did at the moment he was plotting the debauchery of his wife, and contriving how he ſhould even take the lady by ſurprize—thus leaving all the fancy of the poets and even Shakeſpear behind him.

His plot ſeemed to be nearly ripe, for ſo early as Saturday following he ſends the plaintiff this letter;—"Dear "Sir, The packet arrived this morning, and as you ſaid "you were willing to come to town, I requeſt you will, "and be in time on Monday morning to be at the meeting "of the Exchequer warrants. News is generally good "here:—the funds are better, but as you will be in town "ſo ſoon, I need not enter into particulars. Your's in "haſte, &c."

This letter being put into the poſt, he wrote another, which he left for the plaintiff in his deſk:—"When we "parted on Thurſday it was for the laſt time; for I ſhall "leave London this night, never to return to it again,

"I have

"I have deceived you, for there is no packet arrived; "and I wish this was the only deception I have practised "against you. When you see my father, for God's sake "break it to him by degrees. I have drawn 700*l.* from "the bankers."

After leaving this letter, he set out himself for Bath, crossing his injured friend upon the road, while he was brooding over the mischief he was about to occasion.

Such was the case upon which the plaintiff had by civil action sought for redress in a Court of Justice—the benevolent laws of England had provided against the infirmities of nature arising from a sudden gust of passion; thus, though death should succeed a blow thus given, the tenderness of the law interfered, but that tenderness only existed until reason could re-assume her throne—and here no sudden passion could exist, for the defendant deliberately sat down to complete his design, and travelled 100 miles to put it in practice, in despite of a solemn promise which he had given.

The Jury therefore were called upon by their verdict to give an wholesome example, and to array themselves in the terrors of justice;—as husbands, or at least the offsprings of marriage, he called upon them to protect it from pollution;—as men engaged in traffic he required them to consider the confidence that was necessary, by which only honour and happiness can be protected;—as fathers and sons, he called upon them to give a solemn lesson to the rising generation:—they should also consider the peculiar situation of the plaintiff by the defendant's withdrawing his plea of Not Guilty, who no doubt thereby thought to lessen the punishment for his crime, and to conceal his disgrace. To counteract this he had, as counsel for the plaintiff, endeavoured to keep it in the court of King's Bench, but the Judges had unanimously rejected his motion, since there was no question of law, and thereby defending this court which had only to decide on the proportion of damages, and he [illegible] no doubt but by their verdict they would prove the Judges were not mistaken.

Thomas Green stated, that Mr. Ashburnham, the father of Mrs. Boddington, remitted to him his money from Bombay; that he sent over to his sister three children, two sons and this daughter; in the year 1785 or 1786, she

was

was brought to town, and placed out to boarding-ſchool. At the latter end of the year 1790, at the requeſt of her father, he fitted her out to return to him. After ſhe was on board, the ſhip put into Deal: and in conſequence of a letter from the plaintiff Mr. Boddington, he, in conjunction with the other guardian, Mr. Perry, agreed that ſhe ſhould remain while propoſals for her marriage with Mr. Samuel Boddington were ſent to her father. In the meanwhile ſhe came on ſhore, and was put under the care of Mrs. Emmerſon. That in time he received Mr. Aſhburnham's conſent, and they were married in conſequence in February, 1792;—that he conſidered they were ſincerely attached to each other; that he witneſſed the ſettlement, which was 10,500*l.* ſtock in the three per cents. that he continued to viſit them from that time till juſt before they went to Bath, and that he had always conſidered them as exceedingly happy.

In his croſs-examination he ſaid, that Mrs. Boddington was uncommonly beautiful; that he believed ſhe was now about twenty-two years of age: he had never obſerved any thing particular in her manner, but repeated, that ſhe was remarkably handſome.

Mrs. *Emmerſon* had known Mrs. Boddington from the time ſhe was ten years of age, ſhe deſcribed her as poſſeſſing great beauty; ſhe was far from forward in her manner, but, on the contrary, very reſerved; and ſhe had always conſidered her behaviour as proper and virtuous. On Mrs. B's returning from on board of ſhip ſhe came to her houſe, where ſhe remained for ſome time, and then went to Mrs. Murray's, at Kenſington. Mr. S. Boddington frequently came to ſee her; he appeared to have a great attachment for her, and he appeared to be the object of her choice and affection. She was preſent at their marriage, and had preſerved an intimacy in the family from that time; and from all the obſervations ſhe had been enabled to make, Mr. Boddington always appeared particularly attentive to her; ſhe was uncommonly domeſtic, and very much attached to her children. The plaintiff and defendant, ſhe ſaid, were firſt couſins, and thought the latter might be about 22.

(To be continued in our next.)

Mrs. Emerſon, in her croſs-examination, ſaid, She had often ſeen the defendant with Mrs. Boddington; ſhe thought his attention to her was very marked and obſervable, and that he admired her very much. She had not noticed this ſo much in mixed as in family parties, and ſhe did not recollect the plaintiff was ever preſent when ſhe made her obſervations: but it made ſo much impreſſion upon her, that about half a year before the circumſtance took place, ſhe communicated her thoughts to Mrs. B. who made no alteration in her conduct to him: indeed, ſhe was very diſtant in her behaviour to every body. She did not mention her ſuſpicions to the plaintiff, conſidering it too delicate a ſubject;—ſhe believed he was between 31 and 32, and ſhe never obſerved any thing improper in his behaviour.

Dr. Henry Cline was introduced to the lady by Mr. Boddington, a little before their marriage, in conſequence of her having a little complaint in her head. He conſtantly viſited them afterwards. Mr. Boddington was remarkably attentive to her and the children, and would have him ſent for profeſſionally on the moſt trifling occaſion. They had two children, one about four years of age, and the other two; to both of whom ſhe was a very fond mother:—and ſo far from having noticed any thing particular between her and the defendant, he was very much ſurpriſed when he heard what had happened.

Joſeph Street, a clerk in the houſe of the plaintiff and defendant, ſaid, the buſineſs of their houſe was to receive conſignments from the Weſt Indies, and that ſpeaking upon the average, he believed they might turn from 3 to 500,000 *l.* per annum. As the plaintiff's town reſidence was in Mark Lane, he had frequent opportunities of ſeeing him in his family, and from his behaviour to Mrs. B. he had ſet her down as one of the happieſt women in the kingdom:—he did not think the plaintiff ever ſpent an evening from home. In her deportment ſhe was very modeſt, and in her manner very reſerved; he was very attentive to her, and ſhe appeared to be pleaſed with it.

This witneſs was then ſhewn the two letters read by Mr. Erſkine, which he proved to be the hand-writing of the defendant, as well as the two drafts upon their banker for 700 *l.*

In his Croſs-examination he ſtated, that the defendant entered into the partnerſhip on the 21ſt of March, 1794; that he reſided with his father at Clapham, who had nine daughters, one only of which was married. That about a fortnight after the elopement, Mrs. B. came to Mark Lane, but ſhe did not ſtay there, and he believed the plaintiff had not lived with her ſince.

Mr. *Law*, on the part of the defendant ſaid, that although he would not undertake to ſtate this unfortunate affair as unworthy blame, yet he thought this caſe could not deſerve to be conſidered in that aggravating light which had been thrown on it by his learned friend; for the defendant certainly did not appear before them as the hardened, faſhionable ſeducer, ſetting down who ſhould be the next object of his ruin and diſgrace; but one, whoſe ſuſceptible heart could not withſtand the blaze of her beauty; her charms had overpowered his duty and reaſon, and ſuſpended his principles, which, until that fatal moment, were without taint or reproach:—they had been the victims of their own paſſions, for repentance had trod upon the heels of guilt; and he who had ſacrificed friends, fortune, and connections for her ſake, at her requeſt, bereaved himſelf of her ſociety, for which he had abandoned every thing that was dear.

Mr. Law then went much at large into arguments againſt heavy damages, contending that the plaintiff would have ample retribution, by the whole commercial concerns of the houſe falling into his hands, and that they ſhould conſider the defendant as a voluntary exile, a ſelf-puniſhed, ſelf-devoted victim, who indeed it did not appear had any property of his own, except what he had made during his partnerſhip, which he was authorized to ſay, after deducting the intereſt for the money which muſt have been advanced for him, did not amount to 3000*l.* He therefore truſted they would look upon him as a young man, who by one lapſe of virtue had been ſevered from his friends and connections, and from all that was dear, to the end of his days: he would therefore recommend him to their temperate and lenient conſideration; his whole ſaving is under 3000*l.* what damages they gave more muſt fall upon an afflicted parent, who had eight daughters to provide for, who would in that caſe become ſufferers by their brother's miſconduct;

duct; he hoped therefore that their verdict would breathe mercy and juſtice, and not, as his learned friend had aſked for, vengeance and terror.

Mr. Burchall, the deputy ſheriff, went over the evidence with ſome neat and pertinent remarks, after which the jury retired for about half an hour, and then returned a verdict of *ten thouſand pounds* damages.

Mr. Boddington had laid them at *fifty thouſand pounds*.

To the EDITOR.

SIR,

ENCLOSED I ſend you a corrected Liſt of all the Stamps now in uſe, which I doubt not will prove highly acceptable to the majority of your readers.

Your's, &c. L. W.

An ALPHABETICAL LIST *of all the* STAMPS *now uſed in* GREAT-BRITAIN; *corrected to July* 5, 1797.

ACTIONS, entry of, in inferior courts, for 40*s.* and upwards, by 5 and 6 W. and M. c. 21, 6*d.* 9 and 10 W. III. c. 25, 6*d.* and by 12 G. I. c. 33. 6*d.* Total *One ſhilling and ſixpence.*

Adjudication, appriſings, charter, reſignation, clare conſtat, cognition of heirs, heretable right, confirmation, novodamus, principal and original inſtrument of ſurrender, retour, ſaiſine, and ſervice in Scotland, 10 Ann, c. 19, 2*s.* 3*d.* 17 G. III, c. 50, 1*s.* 6*d.* 23 G. III. c. 58. 1*s.* and 37 G. III. c. 90, 4*s.* 9*d.* Total *Nine ſhillings and ſixpence.*

Admiralty or Cinque Ports—Any anſwer exhibited in theſe courts, 5 W. & M. c. 21, 6*d.* 9 and 10 W. III, c. 25, 6*d.* 23 G. III. c. 58, 1*s.* 37 G. III. c. 90, 3*s.* Total *Five Shillings.*

—Any libel, allegation, depoſition, or inventory, exhibited in the courts of Admiralty or Cinque Ports, 5 W. & M. c. 21, 6*d.* 9 and 10 W. III. c. 25, 6*d.* 12 G. I. c. 33, 6*d.* 23 G. III. c. 58, 1*s.* 37 G. III. c. 90, 2*s.* 6*d.* Total *Five Shillings.*

—Any copy of any citation, monition, or anſwer, made in the courts of Admiralty or Cinque Ports, 5 W. & M. c. 21, 6*d.* 9 and 10 W. III. c. 25, 6*d.* 12 G. I. c. 33, 6*d.*

6d. 23 G. III. c. 58, 1s. 37 G. III. c. 90, 3d. Total *Five Shillings.*

—Any copy of any libel, allegation, depoſition, or inventory, exhibited in the courts of Admiralty, or Cinque Ports, 5 W. & M. c. 21, 6d. 9 and 10 W. III. c. 25, 6d. 12 G. I. c. 33, 6d. 23 G. III. c. 58, 1s. 37 G. III. c. 90, 2s. 6d. Tot. *Five Shillings.*

—Any perſonal decree, warrant, or monition, in any court of Admiralty or the Cinque Ports, or any copy thereof, 5 W. & M. c. 21, 2s. 6d. 9 and 10 W. III. c. 25, 2s. 6d. 37 G. III. c. 90, 5s. Tot. *Ten Shillings.*

—Any ſentence in the courts of Admiralty or Cinque Ports, or any attachment made out by the ſame, or relaxation thereof, 5 and 6 W. & M. c. 21, 5s. 9 and 10 W. III. c. 25, 5s. 37 G. III. c. 90, 10s. Tot. *One Pound.*

—Any ſentence or final decree exhibited in the courts of Admiralty or Cinque Ports, or any copy thereof, 5 W. & M. c. 21, 6d. 9 and 10 W. III. c. 25, 6d. 23 G. III. c. 58, 1s. 37 G. III. c. 90, 2s. Tot. *Four Shillings.*

Admiſſion into corporations or companies, 5 G. III. c. 46, 2s. 23 G. III. c. 58, 2s. 37 G. III. c. 90. 4s. Tot. *Eight Shillings.*

Admiſſion into any inn of Chancery, 5 W. III. c. 21, 1s. 9 and 10 W. III. c. 25, 1s. 37 G. III. c. 90. 4l. Tot. *Four Pounds Two Shillings.*

Admiſſion into any of the four inns of Court, 5 W. III. c. 21, 1s. 9 and 10 W. III. c. 25, 1s. 2 G. III. c. 36, 40s. 5 G. III. c. 47, 4l. 23 G. III. c. 58, 40s. 37 G. III. c. 90, 8l. 2s. Tot. *Sixteen Pounds Four Shillings.*

Admittance of fellow of College of Phyſicians, attorney, clerk, advocate, proctor, notary, or other officer of any court whatſoever in Great Britain, except under 10l. per annum, 5 W. III. c. 21. 40s. 9 and 10 W. III. c. 25, 40s. 12 Ann, ſ. 2, c. 9, 40s. 23 G. III. c. 58, 40s. 37 G. III. c. 90, 8l. Tot. *Sixteen Pounds.*

Advertiſement in newſpaper, 10 Anne, c. 19, 1s. 30 G. II. c. 19, 1s. 20 G. III. c. 28, 6d. 29 G. III. c. 50, 6d. Tot. *Three ſhillings.*

Advertiſement in periodical pamphlets, 30 G. II. c. 19, 2s. 20 G. III. c. 28, 6d. 29 G. III. c. 50, 6d. Tot. *Three ſhillings.*

Affidavit

Affidavit in any court of law or equity, at Weſtminſter, or in any court of Great Seſſions for the counties in Wales, or in the court of the county palatine of Cheſter, or copies thereof, 5 W. III. c. 21, 6*d.* 9 and 10 W. III. c. 25, 6*d.* 32 G. II. c. 35, 6*d.* 35 G. III. c. 30, 6*d.* Tot. *Two ſhillings.*

Affidavit in inferior courts, *One ſhilling.*

Agreements (except where the matter of agreement ſhall not exceed twenty pounds, and alſo except thoſe for leaſe at rack rent of meſſuages under five pounds, thoſe for hire of labourers, artificers, manufacturers, or menial ſervants, and thoſe relating to ſale of goods, &c.) by 23 G. III. *c.* 58, 6*s.* 35 G. III. c. 30, 1*s.* 37 G. III. c. 90, 3*s.* Tot. *Ten ſhillings.*

No memorandum or agreement written upon an unſtamped paper ſhall be deemed void, if it is ſtamped at the head office, and the duty paid within twenty-one days after it ſhall have been entered into.

Almanack, book or ſheet, Old Duty 4*d.* and by 37 G. III. c. 90, an additional 4*d.* Tot. *Eight-pence.*

Anſwer, ſentence, and final decree, in eccleſiaſtical courts, and copies thereof, and copies of citation or monition, 5 W. III. c. 21, 6*d.* 9 and 10 W. III. c. 25, 6*d.* 23 G. III. c. 58, 1*s.* Tot. *Two ſhillings.*

Appeal from admiralty, arches, or prerogative court of Canterbury or York, 5 W. III. c. 21, 40*s.* 9 and 10 W. III. c. 25, 40*s.* 12 Ann, ſ. 2, c. 9, 40*s.* 37 G. III. c. 90, 6*l.* Tot. *Twelve pounds.*

Appearance on common bail, 5 W. III. c. 21, and 9 and 10 W. III. c. 25, 6*d.* 4 Ann, c. 12, 6*d.* 32 G. II. c. 35, 6*d.* Tot. *One ſhilling and ſixpence.*

Appearance on ſpecial bail, 5 W. III. c. 21, 1*s.* 9 and 10 W. III. c. 25, 1*s.* Tot. *Two ſhillings.*

Apprentices. The ſtamps upon apprentices indentures amount to 20*s.* that is, each indenture muſt be on a 10*s.* ſtamp (ſee Deeds); except pariſh apprentices or charity children, for whom a ſixpenny ſtamp on each indenture is ſufficient, by 1 W. & M. c. 21.

And if a fee be given with an apprentice, clerk, or ſervant, bound or articled for a term of years, the following duty muſt be paid in reſpect of ſuch fee:

From 1*l.* *to* 50*l.* *ſixpence for every pound.*

All

All above 50l. *that is* 51l. *and upwards*, 1s. *per pound; to be paid by the maſter or miſtreſs.*

The *full* ſum given muſt be ſet down in the indentures, or forfeit double the amount, if diſcovered.

And the indentures muſt be brought to the ſtamp-office, if executed within the bills of mortality, within one month; or if executed in the country, to their agents within two months after binding, and the duty paid, or the indentures become void and forfeit 50*l.* beſide.

Aſſignments of bail bonds, 5 W. III. c. 21, 6*d.* 9 and 10 W. III. c. 25, 6*d.* Tot. *One ſhilling.*

Aſſurance of Houſes and Policy, ſee Inſurance

Attachment in Admiralty or Cinque Ports, 5 and 6 W. & M. c. 21, 5*s.* 9 and 10 W. III. c. 25, 5*s.* 37 G. III. c. 90, 10*s.* Tot. *One pound.*

Attorney, letter of. See Deeds.

Attorney, admittance of. See Admittance

——— every ſolicitor, attorney, notary, proctor, agent, or procurator, practiſing in any of the courts at Weſtminſter, eccleſiaſtical, admiralty, or cinque port courts, in his Majeſty's courts in Scotland, the great ſeſſions in Wales, the courts in the counties palatine, or any other courts, holding pleas to the amount of 40*s.* or more, ſhall take out a certificate annually, upon which there ſhall be charged, if the ſolicitor, &c. reſides in any of the Inns of Court, or in London, Weſtminſter, Southwark, St. Pancras, St. Mary-le-bon, or within the bills of mortality, a ſtamp duty of 5*l.* in any other part of Great Britain 3*l.* 25 *G.* III. *c.* 80.

And every ſolicitor, attorney, notary, proctor, agent, or procurator, in any court in England, holding plea of 40*s.* ſhall annually, between Nov. 1, and the end of Michaelmas term, deliver at the head office for ſtamps a note, containing his name and place of abode, and thereupon and upon payment of the duties in reſpect of his abode, every ſuch perſon ſhall be entitled to his certificate, to be iſſued by the commiſſioners of ſtamps, or their proper officer, 37 G. III. c. 90, ſ. 26.

And every ſuch certificate ſo obtained ſhall be entered with the proper officer of the court where the party ſhall practice, who ſhall be paid 1*s.* for the entry, and the books

books of such entry may be inspected by all persons *gratis*, s. 27.

And every such certificate shall bear date the 2d day of November, and shall cease on the 1st day of November next following, s. 28.

Certificates granted before November 1, 1797, shall cease on that day: and persons who shall deliver up such certificates then in force to the commissioners of stamps, or their proper officer, to be cancelled, shall be entitled to an allowance of duty in proportion to the period then unexpired, s. 29.

Persons who shall, after the 1st day of November, 1797, act without obtaining a certificate, or without entering the same as aforesaid, or shall deliver in to any person at the Stamp Office any account of a residence with intent to evade the higher duties, shall forfeit 50*l*. and be incapable of suing for any fees, s. 30.

And every person admitted, sworn, enrolled, or registered in any of the courts, who shall neglect to obtain his certificate in manner aforesaid for the space of one whole year, shall from thenceforth be incapable of practising in his own name, or in the name of any other; but the courts may re-admit him on payment of the duty accrued since the expiration of his last certificate, and such further sum as the court shall order by way of penalty. s. 31.

Attornies Clerks. By 34 G. III. c. 14. there shall be paid for every contract in writing, whereby any person shall become bound to serve as a clerk in order to his admission as a solicitor or attorney, the additional duties following, *viz.* For every piece of vellum, parchment, or paper, upon which shall be written any such contract whereby any person shall become bound to serve as a clerk as aforesaid, in order to his admission as a solicitor or attorney in any of the courts at Westminster, there shall be charged a stamp duty of *One Hundred Pounds*.

And in order to his admission as a solicitor or attorney in any of the courts of Great Sessions in Wales, or in the Counties Palatine of Chester, Lancaster, or Durham, or in any Court of Record in England, holding pleas to the amount of 40*s*. and not in any of the said courts at Westminster, there shall be charged a stamp duty of *Fifty Pounds*.

Award,

Award, 23 G. III. c. 58, 5*s*. 37 G. III. c. 90, 5*s*. Tot. *Ten Shillings*.

Bail-bonds, and assignments thereof, 5 W. III. c. 21, 6*d*. 9 and 10 W. III. c. 25, 6*d*. Tot. *One Shilling*.

Beneficial warrant under sign manual, (except for navy, army and ordnance) 5 W. III. c. 21, 2*s*. 6*d*. 9 and 10 W. III. c. 25, 2*s*. 6*d*. 12 Ann, s. 2, c. 9, 2*s*. 6*d*. 23 G. III. c. 58, 5*s*. 37 G. III. c. 90, 12*s*. 6*d*. Tot. *One Pound Five Shillings*.

Bill of lading, Old Duty 1*s*. 37 G. III. c. 90, 1*s*. Tot. *Two Shillings*.

Bills of Exchange, Promissory Notes, Drafts, or Orders.

(31 G. III. c. 25. and 37 G. III. c. 90.)

THE former duties on these instruments, which were, by 23 G. III. c. 49, 3*d*. *if under* 10*l*.—6*d*. *if under* 50*l*.—*and* 1*s*. *if of* 50*l*. *or upwards, are repealed.*

And this act (31 *G*. III. *c*. 25) enacts that *after Aug*. 1, 1791, there shall be paid *the new duties* following, *viz*.

For every piece of vellum, parchment, or paper, upon which any *bill of exchange, draft, or order for the payment of money on demand*, shall be written, &c. where the sum amounts to 40*s*. and does not exceed 5*l*. 5*s*. — a stamp duty of *three pence*, and by 37 G. III. an additional *penny*. Tot. *Four Pence*.

Above 5*l*. 5*s*. and not exceeding 30*l*. *sixpence*, and by 37 G. III. c. 90, *two pence*.—Tot. *Eight Pence*.

Above 30*l*. and not exceeding 50*l*. *nine pence*, and by 37 G. III. c. 90, *three pence*.—Tot. *One Shilling*.

Above 50*l*. and not exceeding 100*l*. *one shilliug*, and by 37 G. III. c. 90, *four pence*.—Tot. *One Shilling and Four Pence*.

Above 100*l*. and not exceeding 200*l*. *one shilling and sixpence*, and by 37 G. III. c. 90, *sixpence*.—Tot. *Two Shillings*

For *every promissory, or other note*, for payment of money *to the bearer on demand*, which may be *re-issuable*, after payment, *at the place where it was first issued*, where the sum amounts to 40*s*. and does not exceed 5*l*. 5*s*.—a stamp duty of *three pence*, and by 37 G. III. c. 90, *one penny*. — Tot. *Four Pence*.

Above

ABOVE 5*l.* 5*s.* and not exceeding 30*l.* *ſixpence*, and by 37 G. III, *c.* 90, *two pence.* Tot. *Eight Pence.*

Above 30*l.* and not exceeding 50*l.* *nine pence*, and by 37 G. III. c. 90, *three pence.* Tot. *One Shilling.*

Above 50*l.* and not exceeding 100*l.* *one ſhilling*, and by 37 G. III. c. 90, *four pence.* Tot. *One Shilling and Four Pence.*

Above 100*l.* and not exceeding 200*l.* *one ſhilling and ſixpence*, and by 37 G. III. c. 90, *ſixpence.* Tot. *Two Shillings.*

[*Where theſe* promiſſory notes *ſhall be paid by the perſon by whom they ſhall have been made or ſigned, and firſt iſſued, and at the place where they were firſt iſſued, the perſon ſo paying the ſame, notwithſtanding ſuch payment, may at any time afterwards, and ſo often as there ſhall be occaſion after every ſuch payment thereof, but not otherwiſe, again iſſue and negociate ſuch notes; and every ſuch note is declared to be after payment, but not otherwiſe, iſſuable and negotiable. But if ſuch notes ſhall be paid by any other than the perſon making or ſigning the ſame, or at any place other than the place of iſſuing, ſuch note ſhall be conſtrued to be vacated and ſatisfied, and ſhall be no longer negotiable but cancelled; and if any perſon ſhall again iſſue any ſuch note after payment by any perſon other than the perſon making the ſame, or at any place other than the place of iſſuing, or if any perſon named in ſuch note for payment thereof, ſhall after payment neglect or refuſe to cancel the ſame, ſuch perſon ſhall forfeit 20l. And if ſuch note ſhall not be cancelled, then, and as often as it ſhall be again iſſued, there ſhall be due, anſwered, and paid the like duty as was firſt charged on ſuch note, to be payable by and charged on the perſon who ſhall again iſſue and negotiate ſuch note, ſ. 7.*]

For *any promiſſory or other note, payable to the bearer on demand, which may be re-iſſued, after payment at the ſame, or any other place than where firſt iſſued*, where the ſum ſhall amount to 40*s.* and not exceed 5*l.* 5*s.* a duty of *ſixpence*, and by 37. G. III. c. 90, *two pence.* Tot. *Eight Pence.*

Above 5*l.* 5*s.* and not exceeding 30*l.* *one ſhilling*; and by 37 G. III. c. 90, *four pence.* Tot. *One Shilling and Four Pence.*

[*It is declared that thoſe Notes may, as often as occaſion ſhall require, be again iſſued by the perſon making the ſame, notwithſtanding ſuch Notes have been paid by the perſon*

making the ſame, or any other perſon in purſuance of any appointment for the payment thereof.]

For every Bill of Exchange, Draft, or Order, payable otherwiſe than on demand, or any promiſſory or other Note payable otherwiſe than to the bearer on demand, where the ſum ſhall amount to 40*s.* and not exceed 30*l.* a ſtamp duty of *ſixpence*, and by 37 G. III. c. 90, *two pence*. Tot. *Eight Pence.*

Above 30*l.* and not exceeding 50*l.* *nine pence*, and by 37 G. III. c. 90, *three pence*. Tot. *One Shilling.*

Above 50*l.* and not exceeding 100*l.* *one ſhilling*, and by 37 G. III. c. 90, *four pence*. To. *One Shilling and Four Pence.*

Above 100*l.* and not exceeding 200*l.* *one ſhilling and ſixpence*, and by 37 G. III. c. 90, *ſixpence*. Tot. *Two Shillings.*

And for every Bill of Exchange, Promiſſory or other Note, Draft, or Order, payable *on demand or otherwiſe, where the ſum ſhall exceed* 200*l.* there ſhall be charged a ſtamp duty of *two ſhillings*, and by 37 G. III. c. 90, *eight pence*. Tot. *Two Shillings and Eight Pence.*

Which duties ſhall be paid by the perſon making or ſigning ſuch bills, &c.

Foreign Bills of Exchange, drawn in ſets, according to the cuſtom of merchants, where the ſum ſhall not exceed 100*l.* ſhall be charged with a ſtamp duty of *ſixpence*, and by 37 G. III. c. 90, *two pence* Tot. *Eight Pence.*—Exceeding 100*l.* and not 200*l.* *nine pence*, and by 37 G. III. c. 90, *three pence*. Tot. *One Shilling.*—And exceeding 200*l.* *one ſhilling*, and by 37 G. III. c. 90, *four pence*. Tot. *One Shilling and Four Pence.*—And every bill of each ſet ſo drawn is declared to be chargeable with the duty.

Exemptions from the above Duties.

1. Drafts or Orders, payable to bearer on demand, bearing date on or before the day on which the ſame ſhall be iſſued, and at the place from which the ſame ſhall be drawn and iſſued, and drawn upon any banker, or perſon acting as a banker, and reſiding or tranſacting buſineſs as a banker, within ten miles of the place where ſuch Draft or Order ſhall be actually drawn and iſſued.

2. All notes and Bills whatever iſſued by the Bank of England, upon condition of their paying into the Exchequer

chequer the annual ſum of 12,000*l.* half yearly, on Oct. 10 and April 5.

New Regulations in 31 *G. III. c.* 25.

If any Bill, &c. ſhall be written on paper not ſtamped, or ſtamped with a ſtamp of lower value than directed; then there ſhall be due and paid the full duty hereby chargeable; which ſhall be payable by and charged upon all perſons who ſhall draw or make, and utter and negociate ſuch Bill, &c. *ſ.* 6. And all perſons who ſhall write or ſign, or cauſe to be written or ſigned, or who ſhall accept *or pay*, or cauſe to be accepted or paid, any Bill, &c. without being firſt ſtamped with a proper ſtamp, *or upon which there ſhall not be ſome ſtamp reſembling the ſame*, ſhall forfeit 20*l.* *ſ.* 10.

Every Promiſſory, or other Note, payable to the bearer on demand, iſſued after payment under this act, ſhall notwithſtanding be payable to the perſon holding the ſame; and ſuch perſon may maintain an action thereupon, *ſ.* 9.

The 19th ſection declares, that no Bill, &c. ſhall be available in law or equity, unleſs ſtamped with the lawful ſtamp; and *that it ſhall not be lawful for the commiſſioners to ſtamp any paper, &c. after any Bill, &c. ſhall be written thereon, under any pretence whatever.*

*** *The Method of recovering the penalties is the ſame as under the Receipt Tax.*—*See* RECEIPTS.

Note, the new duties on Bills of Exchange and Promiſſory Notes to commence on July 5, 1797. And no Note, allowed by 31 G. III. c. 25, to be iſſued again, ſhall, after July 5, 1797, be ſo iſſued until properly ſtamped with the new ſtamps.

Bills, anſwers, replications, rejoinders, demurrers, interrogatories, depoſitions taken by commiſſions, and other proceedings in equity, 5 W. III. c. 21, 1*s.* 9 and 10 W. III. c. 25, 1*s.* 23 G. III. c. 58, 6*d.* Tot. *Two Shillings and Sixpence.*

Bonds, (except ſuch as are given as ſecurity for money) 5 W. & M. c. 21, 6*d.* 9 and 10 W. III. c. 25, 6*d.* 12 Ann, ſ. 2, c. 9, 6*d.* 30 G. II. c. 19, 2*s.* 16 G. III. c. 34, 1*s.* 17 G. III. c. 50, 1*s.* 6*d.* 23 G. III. c. 58, 1*s.* 35 G. III. c. 30, 1*s.* 37 G. III. c. 90, 3*s.* Tot *Ten Shillings.*

Coaſt bonds, and bonds on wills and adminiſtrations not exceeding 20*l.* and bonds given by the widow of any ſoldier or ſailor, are exempt from the duty impoſed by 37 G. III. c. 90.

Bonds given as ſecurity for payment of money, if not above one hundred pounds, 7*s.* 35 G. III. c. 30, and 3*s.* by 37 G. III. c. 90. Tot. *Ten Shillings.*

Ditto, if above one hundred pounds, and under five hundred, 10*s.* by 23 G. III. c. 58, and by 37 G. III. c. 90, 10*s.* Tot. *One Pound.*

Ditto, if of five hundred pounds or upwards, 15*s.* by 23 G. III. c. 58, and by 37 G. III. c. 60, 15*s.* Tot. *One Pound Ten Shillings.*

Where the amount ſhall be one thouſand pounds or upwards, 37 G. III. c. 90, the further ſum of 10*s.* Tot. *Two Pounds.*

Where the amount ſhall be two thouſand pounds or upwards, the further ſum of 1*l.* Tot. *Three Pounds.*

Where the amount ſhall be five thouſand pounds or upwards, the further ſum of 2*l.* Tot. *Five Pounds.*

Briefs for collecting charitable benevolence, &c. 5 W. III. c. 21, 40*s.* 23 G. III. c. 58, 40*s.* Tot. *Four Pounds.*

Cards, per pack, *Two Shillings.*

Certificate of barriſter in any of the inns of court, 5 W. III. c. 21, 40*s.* 2 G. III. c. 46, 40*s.* 5 G. III. c. 47, 6*l.* 23 G. III. c. 58, 4*l.* 37 G. III. c. 90, 14*l.* Tot. *Twenty-eight Pounds.*

Certificate or debenture for drawbacks, 9 Ann, c. 23, 8*d.* 19 G. III. c. 66, 8d. 23 G. III. c. 58, 8*d.* 37 G. III. c. 90, 2*s.* Tot. *Four Shillings.*

Certificate of marriage, except of ſeamen's widows, 5 W. III. c. 21, *Five Shillings.*

Certiorari, writ of error, or writ of appeal, except to delegates, *Ten Shillings.*

Charity childrens indentures, 1 W. and M. c. 21, ſixpence each, or one ſhilling the pair.

Citation or monition, libel or allegation, depoſition or inventory, exhibited in any eccleſiaſtical court, and all copies thereof, (except copies of citation or monition, for which ſee anſwer) 5 W. III. c. 21, 6*d.* 9 and 10 W. III. c. 25, 6*d.* 12 G. I. c. 21. 6*d.* 23 G. III. c. 58, 1*s.* Tot. *Two Shillings and Sixpence.*

Collation

Collation, donation, or preſentation to any eccleſiaſtical dignity, promotion, or benefice, of the yearly value of 10*l.* and upwards in the king's books, 5 W. III. c. 21, 40*s.* 9 and 10 W. III. c. 25, 40*s.* 19 G. III. c 66, 40*s.* 27 G. III. c. 90, 6*l.* Tot. *Twelve Pounds.*

Commiſſion eccleſiaſtical, 5 W. & M. c. 21, 2*s.* 6*d.* 9 and 10 W. III. c. 25, 2*s.* 6*d.*. Tot. *Five Shillings.*

Common bail to be filed in any court whatſoever 5 W. III. c. 21, and 9 and 10 W. III. c. 25, 6*d.* 4 Ann, c. 12, 6*d.* 32 G. II. c. 35, 6*d.* Tot. *One Shilling and Sixpence.*

Conveyance, ſurrender of grants of offices, releaſe, or other deed inrolled in any court of record, or by any cuſtos rotulorum or clerk of the peace, 5 W. III. c. 21, 5*s.* 17 G. III. c. 30, 2*s.* 6*d.* 23 G. III. c. 58, 2*s.* 6*d.* 37 G. III. c. 90, 10*s.* Tot. *One Pound.*

Copy of depoſitions in Chancery, or other court of equity at Weſtminſter, copy of any bill, anſwer, plea, demurrer, replication, rejoinder, interrogatories, or other proceedings whatever in ſuch courts of equity, 5 W. III. c. 21, 1*d.* 9 and 10 W. III. c. 25, 1*d.* 19 G. III. c. 66, 1*d.* Tot. *Three Pence.*

Copy of wills, 5 W. III. c. 21, 1*d.* 9 and 10 W. III. c. 25, 1*d.* 19 G. III. c. 66, 1*d.* and by 37 G. III. c. 90, 3*d.* Tot. *Sixpence.*

Copy—any copy, purporting to be a true copy, or atteſted to be a true copy of any indenture, leaſe, or other deed, or any part thereof, for the ſecurity or uſe of any perſon, other than the perſon having or being entitled to the cuſtody of ſuch indenture, leaſe, or other deed, 37 G. III. c. 90, *Six Shillings and Eight Pence.*

And the number of ſtamps required to be uſed for ſuch copies of deeds, are one for every ten common law ſheets of ſeventy-two words, but if, after a calculation in that manner, there ſhall remain a number of words leſs in quantity than ten common law ſheets, no further ſtamp is required.

Copy of any ſurrender of, and admittance to, any cuſtom right eſtate, not being copyhold, which ſhall paſs by ſurrender and admittance, or by admittance only, and which ſhall not paſs by deed, within England, Wales, and Town of Berwick upon Tweed, 17 G. III. c. 50,

4*s.* 6*d.*

4*s*. 6*d*. and if above 20*s*. per annum, by 23 G. III. c. 58, 2*s*. 6*d*. 51 G. III. c. 90, 3*s*. Tot. *Ten Shillings*.

1. Declaration, plea, replication, rejoinder, demurrer, or other pleading whatever, in any court of law at Weſtminſter, or any of the courts of the Principality of Wales, or any of the Counties Palatine of Cheſter, Lancaſter, or Durham, and copies thereof, 5 W. III. c. 21, 1*d*. 9 and 10 W. III. c. 25, 1*d*. 32 G. II. c. 35, 1*d*. Tot. *Three Pence*.

2. Declaration, plea, replication, rejoinder, demurrer, or other pleading, in any inferior court of law, and copies thereof, 5 W. III. c. 21, 1*d*. 9 and 10 W. III. c. 25, 1*d*. Tot. *Two Pence*.

Deeds. Any indenture, (except pariſh indentures) leaſe, or deed roll; and any charter party, releaſe, contract, or other obligatory inſtrument; or any procuration or letter of attorney, 5 W. & M. c. 21, 6*d*. 9 and 10 W. III. c. 25, 6*d*. 12 Ann, ſ. 2, c. 9, 6*d*. 30 G. II. c. 19, 1*s*. 16 G. III. c. 34, 1*s*. 17 G. III. c. 50, 1*s*. 6*d*. 23 G. III, c. 58, 1*s*. 35 G. III. c. 30, 1*s*. 37 G. III c. 90, 3*s*. Tot. *Ten Shillings*.

The number of ſtamps required to be uſed on ſuch deeds are one for every fifteen common law ſheets, (of 72 words each) contained in the deed, or in any ſchedule or inſtrument annexed thereto, or any indorſement thereon.

Depoſitions in courts of equity. See Bills, Copy.

————in Eccleſiaſtical Court. See Citation.

Dice, per pair, and all other things uſed for any game of chance, 9 Ann, c. 23, 5*s*. 29 G. II. c. 13, 5*s*. 16 G. III. c. 34, 2*s*. 6*d*. 29 G. III. c. 50, 2*s*. 6*d*. Tot. *Fifteen Shillings*.

Diſpenſation to hold two eccleſiaſtical dignities, or benefices, or other diſpenſation from the Archbiſhop of Canterbury, 5 W. III. c. 21, 40*s*. 9 and 10 W. III. c. 25, 40*s*. 12 Ann, ſ. 2, c. 9, 40*s*. 19 G. III. c. 66, 40*s*. 23 G. III. c. 50, 40*s*. 37 G. III. c. 90, 10*l*. Tot. *Twenty Pounds*.

Exemplification, under the ſeal of any court, 5 W. III. c. 21, 5*s*. 9 and 10 W. III. c. 25, 5*s*. 19 G. III. c. 66, 5*s*. 23 G. III. c. 58, 5*s*. 37 G. III. c. 90, 1*l*. Tot. *Two Pounds*.

Faculty

Faculty, from the Archbiſhop of Canterbury, or Maſter of the Faculties, 5 W. III. c. 21, 40*s*. 9 and 10 W. III. c. 25, 40*s*. 12 Ann, ſ. 2, c. 9, 40*s*. 19 G. III. c. 66, 40*s*. 23 G. III. c. 58, 40*s*. 37 G. III. c. 90, 10*l*. Tot. *Twenty Pounds*.

Grant. Any grant, or letters patent, under the great ſeal, or the ſeal of the Duchy of Lancaſter, of any honour, dignity, promotion, franchiſe, liberty, or privilege, or the exemplification thereof, 5 W. III. c. 21, 40*s*. 9 and 10 W. III. c. 25, 40*s*. 12 Ann, ſ. 2, c. 9, 40*s*. 23 G. III. c. 58, 40*s*. 37 G. III. c. 90, 8*l*. Tot. *Sixteen Pounds*.

Grant of his Majeſty for money exceeding one hundred pounds, which ſhall paſs the great ſeal, or privy ſeal, 5 W. & M. c. 21, 2*l*. 9 and 10 W. III. c. 25, 2*l*. 12 Ann, ſ. 2, c. 9. 2*l*. 37 G. III. c. 90, 6*l*. Tot. *Twelve Pounds*.

Grant of land in fee, leaſe for years or other profits, not particularly charged under the great ſeal, ſeal of Exchequer, Duchy or County Palatine of Lancaſter, or privy ſeal, 5 W. III. c. 21, 40*s*. 9 and 10 W. III. c. 25, 40*s*. 37 G. III. c. 90, 6*l*. Tot. *Ten Pounds*.

Grant of office or employment. exceeding 50*l*. a year, 5 W. III. c. 21, 40*s*. 9 and 10 W. III. c. 25, 40*s*. 12 Ann, ſ. 2, c. 9, 40*s*. Tot. *Six Pounds*.

If above 100*l*. (to be calculated on the ſalary, fees and perquiſites) an additional 6*l*. by 37 G. III. c. 90. Tot. *Twelve Pounds*.

Habeas Corpus, 5 W. III. c. 21. *Five Shillings*.

Inſurance of houſes or goods from fire 1*s*. 6*d*. per ann. for every 100*l*. inſured, 22 G. III. c. 48, an additional 6*d*. by 37 G. III. c. 90, ſ. 19. Tot. *Two Shillings per Cent*. See alſo Policy.

Inſurance upon any ſhip, goods, or merchandiſe, *where the ſum inſured amounts to one hundred pounds, Two Shillings and Sixpence, and ſo progreſſively for every one hundred pounds inſured*. 35 *G. III. c.* 63.

And where the ſum inſured ſhall not amount to one hundred pounds, a like duty of Two Shillings and Sixpence.

And where the ſum inſured ſhall exceed one hundred pounds, or any progreſſive ſums one hundred pounds each, by any fractional part of one hundred pounds, a like duty of Two Shillings and Sixpence for each fractional part of one hundred pounds.

And

And upon every insurance where the premium shall not exceed the rate of ten shillings, there shall be paid, where the sum insured shall amount to one hundred pounds, a duty of One Shilling and Three-pence, and so progressively for every sum of one hundred pounds.

And where the sum insured shall not amount to one hundred pounds, a like duty of One Shilling and Three Pence.

And where the sum insured shall exceed one hundred pounds, or any progressive sums of one hundred pounds each, by any fractional part of one hundred pounds, a like duty of One Shilling and Three-Pence for such fractional part of one hundred pounds.

Which duties shall be payable by the assured.

This act does not extend to any insurance of houses, furniture, goods, wares, merchandizes, or other property, from loss by fire, already subject to duty; nor any insurance on lives. 35 G. III. c. 63.

Institution, or licence ecclesiastical in England, Wales, or Berwick upon Tweed, (except licences of any ecclesiastical court or ordinary, appointing any stipendiary curate, in which the annual amount of the stipend shall be inserted, 28 G. III. c. 28.) 5 W. III c. 21, 5*s*. 9 and 10 W. III. c. 25, 5*s*. 12 Ann, s. 2. c. 9, 5*s*. 37 G. III. c. 90, 15*s*. Tot. *One Pound Ten Shillings.*

Inventory, or catalogue of furniture, with reference to any agreement, 23 G. III. c. 58, 2*s*. 6*d*. 37 G. III. c. 90, 2*s*. 6*d*. Tot. *Five Shillings.*

Lease for years, or other profits, not particularly charged, under the great seal, seal of Exchequer, or Duchy or County Palatine of Lancaster, or privy seal, 5 W. III. c. 21, 40*s*. 9 and 10 W. III. c. 25, 40*s*. 37 G. III. c. 90, 6*l*. Tot. *Ten Pounds.*

Letter of attorney for transfer or disposal of stock, or any other purpose, 5 W. III. c. 21, 6*d*. 9 and 10 W. III. c. 25, 6*d*. 12 Ann, s. 2, c. 9, 6*d*. 30 G. II. c. 19, 1*s*. 16 G. III. c. 34, 1*s*. 17 G. III. c. 50, 1*s*. 6*d*. 23 G. III. c. 50, 1*s*. 35 G. III. c. 30, 1*s*. 37 G. III. c. 90, 3*s*. Tot. *Ten Shillings.*

Licence for marriage, 5 W. c. III. c. 21, *Five Shillings.*

Licence for retailing beer and ale, *One Pound Eleven Shillings and Sixpence.*

Licence to keep a mad-house, *Five Shillings.*

Licence to keep lying-in hospitals, *Five Shillings.*

Licence

Licence to keep lottery-offices, *Fifty Pounds.*

Mart, letters of, 5 W. III. c. 21, 5*s.* 9 and 10 W. III. c. 25, 5*s.* 12 Ann, ſ. 2, c. 9, 5*s.* 37 G. III. c. 90, 15*s.* Tot. *One Pound Ten Shillings.*

Matriculation in the Univerſities, 5 W. III. c. 21, 1*s.* 9 and 10 W. III. c. 25, 1*s.* 23 G. III. c. 58, 2*s.* 37 G. III. c. 90, 4*s.* Tot. *Eight Shillings.*

Newgate pardon, 5 W. III. c. 21, *Two Pounds.*

Newſpapers. Every newſpaper or paper containing public news, intelligence, or occurrences, contained in half a ſheet or leſs, 10 Ann, c. 9, and 11 G. I, c. 8, ½*d.* 30 G. II. c. 19, ½*d.* 16 G. III. c. 34, ½*d.* 29 G. III. c. 50, ½*d.* Tot. *Two-pence.*

Being larger than half a ſheet, and not exceeding a whole ſheet, 10 Ann, c. 19, and 11 G. I. c. 8, 1*d.* 30 G. II. c. 19, ½*d.* 16 G. III. c. 34, ½*d.* 29 G. III. c. 50, ½*d.* Tot. *Two-pence* ½*d.*

And, IN ADDITION TO THE ABOVE DUTIES, *by* 37 G. III. c. 90, *ſ.* 1, *there ſhall be paid, whether the ſame be contained in half a ſheet, or any leſs piece of paper; or in any paper larger than half a ſheet, the ſum of* one penny halfpenny, *making in the whole* four-pence.

But for every newſpaper not ſold at more than 6*d.* ſhall be allowed a diſcount on the amount of the whole of the duty, after the rate herein after mentioned; that is to ſay, perſons who ſhall bring paper to be ſtamped, ſhall, on preſent payment, at any one time, of the ſum of 10*l.* or upwards, on account of the duties, be entitled to an allowance of 16*l.* per cent. per annum on the ſum paid, 37 G. III. c. 90.

Alſo, if the proprietor or printer, ſhall make it appear that a newſpaper has been, for three calendar months before June 22, 1797, ſold for more than 4½*d.* the diſcount may be allowed, if the advance of price be no more than the new duty.

The commiſſioners are to provide two ſtamps, one denoting that the diſcount has been allowed, and the other that it has not. And if any perſon ſhall print any paper without printing thereon the full price at which it is to be ſold, or ſhall print thereon any higher price than is allowed by this act, or ſhall ſell or expoſe to ſale any ſuch paper, at any greater price than allowed, ſuch perſon ſhall forfeit 20*l.*

But where the allowance hereby granted is not demanded, the former allowance of 4*l.* per cent. on payment of the former duties, may be ſtill made, and, in ſuch caſe, this act is not to limit the price of the paper, ſ. 37.

Notarial Acts. Any proteſt or notarial act whatever, 5 W. & M. c. 21, *6d.* 9 and 10 W. III. c. 25, *6d.* 23 G. III. c. 58, 1*s.* 37 G. III. c. 90, 2*s.* Tot. *Four Shillings.*

Order in any court at Weſtminſter, and copy, 5 W. III. c. 21, *6d.* 9 and 10 W. III. c. 25, *6d.* 32 G. II. c. 35, *6d.* Tot. *One Shilling and Sixpence.*

Original writ (unleſs præcapias) ſubpœna bill of Middleſex, latitat, writ of capias, quo minus, writ of dedimus proteſtatem, every other writ, proceſs, or mandate, for forty ſhillings or upwards, 5 W. III. c. 21, *6d.* 9 and 10 W. III. c. 25, *6d.* 12 G. I. c. 33, *6d.* 32 G. II. c. 35, *6d.* 23 G. III. c. 58, *6d.* 35 G. III. c. 30, 1*s.* Tot. *Three Shillings and Sixpence.*

Pamphlets of half a ſheet, or leſs, *A halfpenny.*

——— of one ſheet, *One penny.*

——— per ſheet, for every ſheet in one copy of every pamphlet, not exceeding ſix ſheets in octavo, or a leſſer ſize, twelve ſheets in quarto, and twenty in folio, *Two Shillings.*

Pardon of corporal puniſhment, crime, forfeiture, offence, or money above 100*l.* 5 W. III. c. 21, 40*s.* 9 and 10 W. III. c. 25, 40*s.* 12 Ann, ſ. 2, c. 9, 40*s.* 37 G. III. c. 90, 6*l.* Tot. *Twelve Pounds.*

Pariſh Charity indentures, *Sixpence* each.

Paſſports, 5 W. & M. c. 21, *6d.* 9 and 10 W. III. c. 25, *6d.* 37 G. III. c. 90, 1*s.* Tot. *Two Shillings.*

Plate. All gold plate made or wrought in Great Britain, per oz. troy, 24 G. III. ſ. 2, c. 53, 8*s.* 37 G. III. c. 90, ſ. 16, 8*s.* Tot. *Sixteen Shillings.*

And for every oz. troy of all ſilver plate, 24 G. III. ſ. 2, c. 53, *6d.* 37 G. III. c. 90, ſ. 16, *6d.* Tot. *One Shilling.*

Policy of aſſurance on houſe, goods, or life, on any ſum not exceeding 1000*l.* 5 W. III. c. 21, *6d.* 9 and 10 W. III. c. 25, *6d.* 10 Ann, c. 26, 2*s.* 4*d.* 12 Ann, ſ. 2, c. 9, *6d.* 30 G. II. c. 19, 1*s.* 5 G. III. c. 35, 2*d.* 25 G. III. c. 58, 1*s.* Tot. *Six Shillings.*

If

If above 1000*l.* 17 G. III. c. 50. *Eleven Shillings.*

But by 37 G. III. c. 90, ſ. 23, the above duties on policies, ſo far as the ſame relate to policies for inſuring houſes, furniture, goods, wares, merchandize, or other property, *from loſs by fire*, are repealed from July 5, 1797, and from that period there ſhall be paid in lieu thereof:

For every policy of aſſurance where the ſum inſured ſhall not amount to 1000*l.* Three ſhillings.

And where it ſhall amount to 1000*l. or upwards*, Six ſhillings.

Preſentation to any eccleſiaſtical dignity, promotion, or benefice, of 10*l.* a year and upwards in the King's books, 5 W. III. c. 21, 40*s.* 9 and 10 W. III. c. 25, 40*s.* 19 G. III. c. 66, 40*s.* 37 G. III. c. 90, 6*l.* Tot. *Twelve Pounds.*

Probate of wills, or letters of adminiſtration, of any eſtate above 20*l.* and under 100*l.* *Ten Shillings.*

If the eſtate is of the value of 100*l.* and under 300*l.* *Two Pounds Ten Shillings.*

If it is of the value of 300*l.* and under 600*l.* *Five pounds ten ſhillings*; and by 37 G. III. c. 90, an additional *Two Pounds Ten Shillings.*

If the eſtate is of the value of 600*l.* and under 1000*l.* *Eight pounds*; and by 37 G. III. c. 90, an additional *Four Pounds.*

If the eſtate is of the value of 1000*l.* and upwards, *Fourteen pounds*; and by 37 G. III. c. 90, an additional *Six Pounds.*

If 2000*l.* and upwards, *Twenty pounds*; and by 37 G. III. c. 90, an additional *Ten Pounds.*

If 5000*l.* and upwards, *Thirty Pounds*; and by 37 G. III. c. 90, an additional *Fifteen Pounds.*

If 10,000*l.* and upwards, *Forty pounds*; and by 37 G. III. c. 90, an additional *Twenty Pounds.*

And if any perſon ſhall adminiſter any perſonal eſtate, without proving the will, or taking out letters of adminiſtration, within ſix months after the death of the party, ſuch perſon ſhall forfeit 50*l.*

Race Horſes. By 24 G. III. c. 31, for every horſe entered to ſtart or run for any plate, prize, ſum of money, or any thing whatever, in addition to the duties of former and ſubſequent acts laid upon horſes, the further ſum of *Two Pounds Two Shillings.*

Receipts from July 5, 1795, shall be paid a stamp duty as follows; viz.

(By 35 G. III. *c.* 25.)

For every piece, &c. upon which shall be written, &c. any receipt, discharge, or acquittance for money, amounting to 40*s.* and not amounting to 20*l.*—*Two-Pence.*

amounting to 20*l.* and not 50*l.*—*Four-Pence.*

amounting to 50*l.* and upwards—*Six-Pence.*

amounting to 100*l.* and not to 500*l.* *an additional sixpence.* Tot. *One Shilling.*

amounting to 500*l.* or upwards, a further additional duty of *one shilling.* Tot. *Two Shillings.*

To be paid by the person by whom such receipts shall be required; salaries, pensions, debts, or other sums payable from the crown excepted; in which case the duty shall be paid by the person giving such receipts.

Exemptions from the above Duties.

Nothing in this act shall extend to any receipt for any legacy, or share of a personal estate, or to any receipt given by the treasurer of the navy, for money received for the service of the navy; or to the receipt of any agent for money impressed to him on account of the pay of the army or ordnance; or to any receipt by any officer, seaman, or soldier, for wages, pay, or pension, due from the navy, army, or ordnance; nor to any receipt to be given for the consideration of the purchase of any share in any public stock or fund; or in the stocks of the bank, East-India, and South-Sea companies, or for the dividends thereof; nor to any receipt given for money deposited in the banks of England or Scotland, or in the house of any bank; nor to any receipt on the back of any bill of exchange, promissory or other note; nor to any release by deed.

Nor shall this act extend to any receipt to be given upon any bill or note of the bank of England; or to any letter acknowledging the receipt of any bills, notes, or securities for money; or to any receipt for the consideration money on or in any deed, bond, mortgage, or instrument; nor to any receipt for drawbacks or bounties; nor to any certificates of over-entry of customs.

New

New Regulations reſpecting Receipts.

[By 35 *G.* III. *c.* 55.]

The full ſum, and the true date, ſhall be inſerted, *and all notes*, memorandums, or writings *whatever*, *whereby any money ſhall be acknowledged to have been paid, ſettled, received, accounted for, diſcharged, releaſed, or in any manner ſatisfied, or which ſhall in any manner ſignify ſuch acknowledgment, and whether the ſame ſhall or ſhall not be ſigned*, ſhall be deemed a receipt, and liable to the duties.

Every receipt, note, memorandum, or writing, which ſhall expreſs any general acknowledgment of any debt, claim, account or demand, being paid, ſettled, received, accounted for, balanced, diſcharged, releaſed or ſatisfied, or whereby any money ſhall be acknowledged to be in full, and whether ſigned or not, ſhall be deemed a receipt for 500*l.* and be liable to the duty of *two ſhillings*; and no ſuch receipt, &c. ſhall be available in law or equity for any other money than the ſum therein expreſſed, unleſs the ſame ſhall be ſtamped with the ſtamp of *Two Shillings*.

And every perſon who, after Aug. 1, 1791, *ſhall write or ſign*, or cauſe to be written or ſigned, *or who ſhall accept*, or cauſe to be *accepted*, any receipt without being ſtamped with a proper ſtamp, or upon which there ſhall be ſtamp of lower value than charged, ſhall forfeit 10*l.* if the ſum does not amount to 100*l.*—and 20*l.* if it amounts to 100*l.* or upwards. And all perſons who ſhall *give or accept* any receipt, &c. in which a leſs ſum ſhall be expreſſed than the ſum actually paid, or who ſhall divide the ſum received into divers ſums with intent to evade the duties, or write off any part of any debt, or *who ſhall be guilty of any device whatever* to defraud of the duties, ſhall forfeit 20*l.*

Receipts on unſtamped paper brought to the ſtamp office within fourteen days after given, may be ſtamped on payment of 5*l.* over the duty; and if brought to be ſtamped after fourteen days, and within one calendar month after given, may be ſtamped on payment of 10*l.* above the duty; and in that caſe, the parties are not to be liable to any of the penalties above mentioned.

Commiſſioners of ſtamps may authoriſe unſtamped books to be uſed in public offices, &c. for taking receipts.

One

One moiety of all penalties ſhall, if ſued for within three months, be to his majeſty; and the other, with full coſts, to the perſon who ſhall inform, &c. and which may be recovered in any of the courts at Weſtminſter, within England; and in the exchequer of Edinburgh, within Scotland.—But one juſtice may hear and determine any offence which ſubjects the offender to any pecuniary penalties—and perſons aggrieved may appeal to the quarter ſeſſions.—The juſtice may mitigate penalties, not leſs than one moiety beſides coſts.—Witneſſes refuſing to attend the juſtice, &c. forfeit 40*s.*—and if the penalties are not proſecuted for within the limited time, they are only recoverable by the crown; and if the whole penalty is recovered by the crown, the informer is to be rewarded by the commiſſioners of ſtamps, at their diſcretion—not exceeding one moiety.

With reſpect to receipts for legacies, ſee 36 G. III. c. 52.

Recognizance, and entries thereof, ſtatute ſtaple, or ſtatute merchant, 5 W. III. c. 21, 5*s.* 9 and 10 W. III. c. 25, 5*s.* 37 G. III. c. 90, 10*s.* Tot. *One Pound.*

Record of niſi prius and poſtea, 5 W. III. c. 21, 2*s.* 6*d.* 9 and 10 W. III. c. 25, 2*s.* 6*d.* Tot. *Five Shillings.*

Regiſter, entry, or teſtimonial, of degrees in the univerſities, 5 W. III. c. 21, 2*l.* 37 G. III. c. 90, 2*l.* Tot. *Four Pounds.*

Regiſter, entry, teſtimonial, or certificate of degrees in any inn of court, 5 W. III. c. 21, 40*s.* 2 G. III. c. 46, 40*s.* 5 G. III. c. 47, 6*l.* 23 G. III. c. 58, 4*l.* 37 G. III. c. 90, 14*l.* Tot. *Twenty Eight Pounds.*

Reprieve, 5 W. III. c. 21, 40*s.* 9 and 10 W. III. c. 25, 40*s.* 12 Ann. ſ. 2, c. 9, 40*s.* 37 G. III. c. 90, 6*l.* Tot. *Twelve Pounds.*

Rule or order in any of the courts at Weſtminſter, and copies thereof, 5 W. III. c. 21, 6*d.* 9 and 10 W. III. 25, 6*d.* 32 G. II. c. 35, 6*d.* Tot. *One Shilling and Sixpence.*

Sacrament certificate, *One Shilling.*

Significavit pro corporis deliberatione, 5 W. and M. c. 21, 5*s.* 9 and 10 W. III. c. 25, 5*s.* Tot. *Ten Shillings.*

Special bail, and appearance thereon. See appearance.

Surrender of, or admittance to, any copyhold land or tenement

tenement in England, Wales, or Berwick upon Tweed; or grant, or leaſe, by copy of court roll, or any other copy of court roll, of any honour or manor, within the ſame parts, except the original ſurrender to the uſe of a will, and the court book or roll itſelf, 16 Ann, c. 19, 2*s.* 3*d.* 17 G. III. c. 50, 2*s.* 3*d.* and, if above 20*s.* per annum, 23 G. III. c. 58, 2*s.* 6*d.* 37 G. III. c. 90, 3*s.* Tot. *Ten Shillings.*

And for every copyhold tenement of 20*s.* per annum, mentioned in any ſurrender, for which a ſeveral fine ſhall be due, a diſtinct ſtamp duty ſhall be charged; and if any officer of a copyhold or cuſtomary court, ſhall receive a fine for any ſurrender, without demanding the duty for each diſtinct tenement, he ſhall forfeit 20*l.* and if he ſhall receive the duties and neglect to purchaſe the proper ſtamps for three months, he ſhall forfeit 5*l.* and double duty, 37 G. III. c. 90.

Transfer of ſtock in any company, ſociety, or corporation, except the bank of England, or South Sea company, 5 W. III. c. 21, 6*d.* 9 and 10 W. III. c. 25, 6*d.* 10 Ann, c. 19, 2*s.* 3*d.* 12 Ann, ſ. 2, c. 9, 4*s.* 6*d.* 23 G. III. c. 58, 2*s.* 3*d.* 37 G. III. c. 90, 10*s.* Tot. *One Pound.*

N. B. The duty upon transfers made at the bank is (by 23 G. III. c. 58) but *Seven Shillings and Nine Pence.*

Warrant, mandate or authority given to an attorney or ſolicitor to carry on or defend a ſuit, &c. in any of the courts at Weſtminſter, eccleſiaſtical, admiralty, or cinque port courts, or in his majeſty's courts in Scotland, the grand ſeſſion in Wales, or courts in the Counties Palatine, where the debt ſhall amount to 40*s.* *Two ſhillings and ſixpence*, to be paid by the attorney and not charged to the client. 25 G. III. *c.* 80.

Writ of covenant for levying fines, 5 W. III. c. 21, 5*s.* 19 G. III. c. 66, 5*s.* 23 G. III. c. 58, 5*s.* 37 G. III. c. 90, 15*s.* Tot. *One Pound Ten Shillings.*

Writ of entry, 5 W. III. c. 21, 5*s.* 19 G. III. c. 66, 5*s.* 23 G. III. c. 58, 5*s.* 37 G. III. c. 90, 15*s.* Tot. *One Pound Ten Shillings.*

Writ of habeas corpus, 5 W. III. c. 21, *Five Shillings.*

By all the ſtamp acts, ſtamps ſpoiled, and not paid for by the perſons uſing them, ſhall be changed.

COURT

COURT OF KING'S BENCH.

Sittings after Term. Before Lord KENYON.

MONDAY, *Dec.* 4.

FALLOWS *v.* WHEELER.

THIS was an action to recover the sum of 10*l.* lost by illegal insurance in the lottery.

It appeared that the defendant, who is a baker in Moor-street, Seven-dials, employed one Miller as his clerk, for the purpose of taking down such numbers of the tickets in the last English Lottery, as any person wished him to insure. The plaintiff and another person insured two numbers, both of which came up drawn on the day for which they were insured; and on Miller's being asked for the money, he said he would pay for one of them, but refused to pay for the other, as it was a *pigeon* number. George Smith, a witness, being asked by Mr. Garrow if he kept pigeons for the lottery, answered sometimes, but denied pigeoning any of the lottery-offices—Fallows, the plaintiff, kept the pigeon numbers.

Pigeoning meant carrying a pigeon trained for the purpose in a bag to Guildhall, and letting it off with a number drawn to a person stationed at the Lottery-Office, who immediately insured it, and of course received the money.

The plaintiff was committed to Newgate for sending a letter to a Mr. Northall, threatening him with bringing such an action as the present, if he did not give the plaintiff 800*l.*

A witness being asked if the defendant was ever thrown into Clerkenwell prison for selling bread short of weight, or for taking illegal insurances. On an objection being made, Lord Kenyon refused to put this question.

Several policies of Miller's hand-writing were produced, and it was proved, that he was the agent of the defendant, and received money on his account in this nefarious business.

After a short charge from Lord Kenyon, the Jury found a verdict for the plaintiff for the 10*l.*

38 G. III. c. 16. *An Act for granting to His Majesty an Aid and Contribution for the Prosecution of the War.*

[12th *January* 1798.]

BY the 38 *G. III. c.* 16, it is enacted, That, from and after the passing of this act, there shall be raised annually, during the term herein-after mentioned, for the use of his majesty, throughout *Great-Britain*, the several additional rates, herein-after mentioned; (that is to say), That every person assessed to any of the duties payable before the passing of this act, on male servants, carriages, or horses kept for the purpose of riding, or of drawing any such carriages, shall be charged annually, with an additional rate in proportion to the amount of the said duties to which such person is assessed, according to the last yearly assessment prior to the 6th of *April*, 1798, in pursuance of any act now in force, and the proportion thereof shall be as follows; *viz.* Where the amount of the said duties shall be under 25*l.* a duty equal to three times the amount; where the amount shall be 25*l.* and under 30*l.* three times the amount and one half the amount; where the amount shall be 30*l.* and under 40*l.* four times the amount; where the amount shall be 40*l.* and under 50*l.* four times the amount and one half; and where the amount shall be 50*l.* or upwards, five times the amount: And that where any person shall be for a less term than a year, the additional rate shall be computed on the aggregate amount of the sums contained in such assessments, and of such further sum to be added as would be payable thereon if the same were made for a whole year. *s.* 1.

Persons assessed to the duties on male servants, carriages, or horses for riding, or drawing carriages, to pay an additional duty on the amount of the last assessment prior to *April* 6, 1798, in certain proportions.

Every person assessed to any of the rates now payable on houses, windows, or lights, or on inhabited houses, on dogs, or on clocks, watches, or time-keepers, (except as herein-after provided), the amount of whose last assessments shall not be equal to 1*l.* shall be exempted from any additional rate; and in all cases where the last assessment shall be 1*l.* or upwards, such person shall pay annually an additional rate in proportion to the said duties to which he is assessed, according to the last yearly assessment, made prior to the 6th of *April* in pursuance of any act; and the proportion thereof shall be as follows; *viz.* Where the amount of such duties shall be under 2*l.* a duty equal to one fourth; where it shall be 2*l.* and under 3*l.*

Persons assessed to the duties on houses, windows, dogs, or clocks or watches, for less than 20*s.* exempted from any additional duty, but if assessed to that or a greater amount, to pay in certain proportions.

3*l.* one half the amount, where it ſhall be 3*l.* and under 5*l.* a duty of three fourths of the amount; where it ſhall be 5*l.* and under 7*l.* 10*s.* a duty equal to the amount; where it ſhall be 7*l.* 10*s.* and under 10*l.* a duty equal to the amount and one half; where it ſhall be 10*l.* and under 12*l.* 10*s.* twice the amount; where it ſhall be 12*l.* 10*s.* and under 15*l.* twice the amount and one half; where it ſhall be 15*l.* and under 20*l.* three times the amount; where it ſhall be 20*l.* and under 30*l.* three times the amount and one half; where it ſhall be 30*l.* and under 40*l.* four times the amount; where it ſhall be 40*l.* and under 50*l.* four times the amount and one half; and where it ſhall be 50*l.* or upwards, five times the amount: And where any perſon ſhall be ſo charged by any ſuch aſſeſſment made for leſs than a year, the additional rate ſhall be computed on the aggregate amount of the ſums contained in ſuch aſſeſſment, and of ſuch further ſum to be added thereto as would become payable thereon if the ſame were made for a whole year. *ſ.* 2.

Lodging houſes or ſhops aſſeſſed under 3*l.* to the duties on houſes, windows, dogs, or clocks or watches, exempted from any additional duty, but if aſſeſſed to that or a greater amount, to pay in certain proportions.

Provided that every perſon who ſhall occupy any dwelling houſe uſually let out by him in part to lodgers, or with the purpoſe of uſually ſo letting out the ſame, or any dwelling houſe, part whereof is occupied by the ſame perſon as a ſhop, the amount of whoſe laſt aſſeſſments, in reſpect of the duties now payable on houſes, windows, or lights, or on inhabited houſes, or on dogs, clocks, watches, or timekeepers, ſhall be in the whole under 3*l.* ſhall be exempted from any additional rate; and where the amount of the laſt aſſeſſment to the ſaid duties, made upon ſuch occupier, ſhall amount to 3*l.* ſuch occupier ſhall be charged annually, with an additional rate in proportion to the amount of the ſaid duties to which he is aſſeſſed, according to the laſt yearly aſſeſſment, made prior to the 6th of *April* 1798, in purſuance of any act now in force; and the proportion thereof ſhall be as follows: *viz.* Where the amount ſhall be 3*l.* and under 5*l.* a duty equal to one tenth of the amount; where it ſhall be 5*l.* and under 7*l.* 10*s.* one fifth of the amount; where it ſhall be 7*l.* 10*s.* and under 10*l.* one fourth of the amount; where it ſhall be 10*l.* and under 12*l.* 10*s.* one half of the amount; where it ſhall be 12*l.* 10*s.* and under 15*l.* three fourths of the amount; where it ſhall be 15*l.* and under 20*l.* a duty equal to the amount; where it ſhall be 20*l.* and under 25*l.* the amount and one fourth; where it ſhall be

be 25*l.* and under 30*l.* a duty equal to the amount and one half; and where it ſhall be 30*l.* or upwards, a duty equal to twice the amount: And where any perſon ſhall be ſo charged by any ſuch aſſeſſment, made for leſs than a year, the additional rate ſhall be computed on the aggregate amount of the ſums contained in ſuch aſſeſſment, and of ſuch further ſum to be added thereto as would become payable thereon if the ſame were made for a whole year. *ſ.* 3.

Perſons whoſe annual income is leſs than 60*l.* exempted from the additional duty, and where it amounts to that ſum or more, to be entitled to abatements as follow.

Provided alſo that every perſon charged to the additional rates hereby impoſed, ſhall, upon proving, as herein-after mentioned, that the amount of his annual income, to be eſtimated as herein-after directed, is leſs than 60*l.* be exempted from the ſaid additional rates; and where ſuch annual income amounts to 60*l.* or more, ſuch perſon ſhall be entitled to ſuch an abatement as may be neceſſary to reduce the ſame, in each caſe reſpectively, in the proportions herein-after ſtated; (that is to ſay),

Where the ſaid annual income ſhall appear to be not leſs than 60*l.* but under 65*l.* to a ſum not exceeding one-hundred and twentieth part of the ſame:

Or not leſs than 65*l.* but under 70*l.* to a ninety-fifth part:

Or not leſs than 70*l.* but under 75*l.* to a ſeventieth part:

Or not leſs than 75*l.* but under 80*l.* to a ſixty-fifth part:

Or not leſs than 80*l.* but under 85*l.* to a ſixtieth part:

Or not leſs than 85*l.* but under 90*l.* to a fifty-fifth part:

Or not leſs than 90*l.* but under 95*l.* to a fiftieth part:

Or not leſs than 95*l.* but under 100*l.* to a forty-fifth part:

Or not leſs than 100*l.* but under 105*l.* to a fortieth part:

Or not leſs than 105*l.* but under 110*l.* to a thirty-eighth part:

Or not leſs than 110*l.* but under 115*l.* to a thirty-ſixth part:

Or not leſs than 115*l.* but under 120*l.* to a thirty-fourth part:

Or not leſs than 120*l.* but under 125*l.* to a thirty-ſecond part:

Or not less than 125*l.* but under 130*l.* to a thirtieth part:

Or not less than 130*l.* but under 135*l.* to a twenty-eighth part:

Or not less than 135*l.* but under 140*l.* to a twenty-sixth part:

Or not less than 140*l.* but under 145*l.* to a twenty-fourth part:

Or not less than 145*l.* but under 150*l.* to a twenty-second part:

Or not less than 150*l.* but under 155*l.* to a twentieth part:

Or not less than 155*l.* but under 160*l.* to a nineteenth part:

Or not less than 160*l.* but under 165*l.* to an eighteenth part:

Or not less than 165*l.* but under 170*l.* to a seventeenth part:

Or not less than 170*l.* but under 175*l.* to a sixteenth part:

Or not less than 175*l.* but under 180*l.* to a fifteenth part:

Or not less than 180*l.* bnt under 185*l.* to a fourteenth part:

Or not less than 185*l.* but under 190*l.* to a thirteenth part:

Or not less than 190*l.* but under 195*l.* to a twelfth part:

Or not less than 195*l.* but under 200*l.* to an eleventh part:

Or to 200*l.* to a tenth part:

And where the said annual income shall be not less than 200*l.* every such person shall be entitled to such an abatement of the additional duty now granted, as may be necessary to reduce it in each case respectively, to a sum not exceeding one tenth part of the said income. *s.* 4.

Persons assessed after *April* 5, 1798, to pay the additional duty on the amount of such assessments from the commencement

Every person not assessed within the year ending on the 5th of *April* 1798, to any of the said duties payable before the passing of this act, and who shall be assessed to any of the said duties in any subsequent year during the term herein-after mentioned, shall be charged with the like additional rate on the amount of the sums contained in such assessment, from the commencement of the year for

for which ſuch aſſeſſment ſhall be made, ſubject nevertheleſs to the like abatement as if ſuch perſon had been aſſeſſed to the ſaid duties within the year ending on the ſaid 5th of *April* 1798. *ſ.* 5.

of the year for which made.

Every perſon who ſhall, by any aſſeſſment to be made after the 5th of *April* 1798, be aſſeſſed in reſpect of the ſaid duties payable before the paſſing of this act, to a greater amount than that contained in the prior aſſeſſment, ſhall be charged with a further additional rate, in proportion to the ſums contained in ſuch latter aſſeſſment, from the commencement of the year for which ſuch latter aſſeſſment ſhall be made. *ſ.* 6.

Perſons aſſeſſed after *April* 5, 1798, to a greater amount than in the prior aſſeſſment, to be charged with a proportional additional aſſeſſment.

And every perſon whoſe aſſeſſment ſhall be increaſed by any ſurcharge to be allowed, ſhall be charged, in reſpect of ſuch increaſed aſſeſſment, in the like proportion as if all the articles in reſpect of which ſuch ſurcharge may be allowed, had been included in the original aſſeſſment. *ſ.* 7.

Surcharges to be charged as if they had been included in the original aſſeſſment.

Provided always, that every aſſeſſment by virtue of this act, ſhall be on the amount contained in any ſuch aſſeſſment of the duties now payable as aforeſaid, excluſive of any fractional parts of ſums not amounting in the whole to one ſhilling. *ſ.* 8.

Fractional parts of aſſeſſments under 1*s.* not to be charged with additional duty.

And that the ſeveral additional rates ſhall be paid annually, during the continuance of the term herein mentioned, to the full amount of the ſums contained in the firſt aſſeſſment to be made thereof reſpectively, without any alteration, except herein otherwiſe directed. *ſ.* 9.

Additional duty to be paid annually to the amount of the firſt aſſeſſment made.

Provided that if the amount of the duties now payable by any perſon ſhall conſiſt of various articles, on the reſpective amounts whereof different rates are hereby impoſed, ſeparate aſſeſſments ſhall be made according to each rate, which aſſeſſments ſhall be reſpectively made on the aggregate amount of the ſaid duties whereon the ſame rate of duty is impoſed; and that in every ſuch caſe, if the duties of 10*l. per cent.* and 10*l. per cent.* now payable on the amount of former duties, ſhall have been calculated on the whole of the ſaid former duties contained in any aſſeſſment, it ſhall be lawful duly to apportion the ſame; and the ſaid reſpective commiſſioners for executing this act ſhall cauſe the ſame to be apportioned according to the reſpective amounts of the ſaid duties. *ſ.* 10.

If the amount of duties now payable conſiſt of articles, the amounts whereof are liable to different rates, ſeparate aſſeſſments to be made for each; and the duties of 10*l. per cent.* and 10*l. per cent.* may be apportioned.

Every

Inns, &c. and boarding ſchools to be chargeable as lodging houſes.

Every innkeeper, and other perſon licenſed to ſell wine, ale, or other liquors by retail, and every perſon keeping any ſchool, academy, or ſeminary for learning, and uſually having their ſcholars to board and lodge (to a number not leſs than ten) in their reſpective dwelling houſes, ſhall be entitled to be exempted in the like caſes, and the additional rate to be impoſed on them reſpectively by this act ſhall be aſcertained in like manner, and under the like regulations, as are herein-before preſcribed with reſpect to perſons aſſeſſed for houſes actually let to lodgers, or having ſhops. *ſ.* 11.

Perſons having one or more houſes, uſually let as ready-furniſhed, to be aſſeſſed as for lodging houſes, and for two or more ſeparately.

Every perſon having one or more dwelling houſes, uſually let as a ready-furniſhed lodging houſe, or keeping one or more dwelling houſes with the purpoſe of ſo uſually letting out the ſame, ſhall, in reſpect of each ſuch dwelling houſe, be liable to the ſaid additional rate, under the like regulations as are herein preſcribed with reſpect to perſons aſſeſſed for houſes let in part to lodgers as aforeſaid, and ſhall be entitled to be exempted from the ſaid additional rate in the like caſes as perſons ſo letting houſes in part to lodgers: Provided that every aſſeſſment made by virtue of this act on any perſon having two or more ſuch dwelling houſes ſo let or kept for letting, ſhall be aſcertained at the rate before-mentioned on the amount of the duties now payable in reſpect of each ſuch dwelling houſe ſeparately, and not on the aggregate amount of the ſaid duties payable in reſpect of all the houſes, or of any other of the ſaid duties for which ſuch perſon ſhall or may be aſſeſſed. *ſ.* 12.

No perſon to be deemed the occupier of a lodging, or ready-furniſhed houſe, unleſs it be ſo let, or has been let within the year preceding appeal, &c.

No perſon ſhall be deemed to occupy any dwelling houſe for the purpoſe of being let out in part to lodgers, or as a ready furniſhed lodging houſe, unleſs it ſhall be actually let, or unleſs ſuch perſon ſhall prove, upon appeal in the manner herein mentioned, that ſuch houſe hath been let out in part to lodgers, or as a ready-furniſhed lodging houſe, within the year preceding the time of making ſuch appeal, or that the ſame, not being ſo let, hath been advertized or publickly offered to be let in the period in which the ſame ſhall not have been ſo let; and that ſuch perſon hath occupied or kept, and doth continue to occupy or keep the ſame, for the purpoſe of being let out in part to lodgers or as a ready-furniſhed lodging houſe. *ſ.* 13.

Provided

Provided that any perſon having more than four children of him or her, or of his or her wife or huſband, or of both of them born in wedlock, being reſpectively under the age of twenty-one years, and maintained by ſuch perſon, ſhall be entitled to the reſpective abatements following, over and above any abatement to which ſuch perſon may be entitled on the ground of income; that is to ſay, any perſon having more than four ſuch children and not amounting to eight, ſhall have an abatement at the rate of 10*l. per cent.* on the amount of the additional rates, any perſon having eight, and not more than nine, an abatement of 15*l. per cent.* on ſuch amount; and any perſon having ten or more, an abatement of 20*l. per cent.* which abatements ſhall be allowed by the reſpective commiſſioners upon appeal, and delivery of a declaration ſtating the number of ſuch appellant's children, and on proof made of the truth of the matters contained in ſuch declaration; and the commiſſioners ſhall cauſe the aſſeſſment to be amended, as the caſe ſhall require. *ſ.* 14.

Perſons having more than four children under 21 years, maintained by them, to be entitled to certain abatements on appeal and proof.

Sheriffs or annual officers of corporations, not liable for additiononal carriages, horſes, or ſervants, kept during the year of their office only. *ſ.* 15.

No phyſician, ſurgeon, apothecary, or midwife, ſhall be aſſeſſed at more than a ſingle rate in addition to the ſum at which he is or may be aſſeſſed by virtue of any act now in force, for a carriage, or for two horſes, where he does not keep more than one carriage, or two horſes, *ſ.* 16.

No academician or aſſociate of the royal academy of arts in *Great-Britain*, keeping one male ſervant only, ſhall be liable to the ſaid additional rate, in a ſum greater than once the amount of the duties now payable on ſuch male ſervant by the laſt aſſeſſment thereof; and every ſuch academician or aſſociate ſhall be aſſeſſed to the ſaid additional rate or duty on houſes, windows, or lights, and on inhabited houſes, at the like rate, and under the like rules as are herein-before preſcribed for dwelling houſes occupied in part as ſhops. *ſ.* 17.

Academicians or aſſociates of the royal academy, keeping one male ſervant, to be aſſeſſed once the former duty, and to the additional duty on houſes and windows as for ſhops.

In every caſe in which the rector or vicar of any pariſh church ſhall employ a curate, which curate ſhall reſide in the rectorial or vicarial houſe, the additional rates upon each ſuch houſe, by this act, ſhall be defrayed by ſuch rector or vicar. *ſ.* 18.

Incumbents to pay for rectorial or vicarial houſes inhabited by curates.

Nothing

Additional duty on houſes or windows not to extend to royal or publick hoſpitals.

Nothing herein contained ſhall extend to charge the additional rate on houſes, windows, or lights, in any of the royal or publick hoſpitals, or any apartments therein uſed or occupied for charitable purpoſes. *ſ.* 19.

Houſes for lunatics to be charged as lodging houſes.

No perſon duly licenſed to keep, and who ſhall keep a houſe for the reception of lunatics, ſhall pay any greater duty than if ſuch houſe had been let to lodgers. *ſ.* 20.

Perſons aſſeſſed to the duties on horſes by 36 *G. III. c.* 15, and 37 *G. III. c.* 106, to pay twice the laſt aſſeſſment, prior to *April* 6, 1798.

Every perſon aſſeſſed to the duties now payable on horſes, granted by two acts of the 36 & 37 *G. III.* ſhall be charged annually, with an additional rate equal to twice the amount of the ſaid duties to which ſuch perſon is aſſeſſed, according to the laſt aſſeſſment made in purſuance of the ſaid acts, prior to the 6th of *April*, 1798, provided that no perſon occupying a farm of leſs than 70*l.* a year, and making a livelihood ſolely thereby, ſhall be chargeable with the ſaid additional rate; and that no perſon occupying a farm of leſs than 150*l.* a year, and making a livelihood ſolely thereby, ſhall be chargeable with the additional rate for more than five ſuch horſes. *ſ.* 21.

Certain occupiers of farms of leſs than 70*l. per ann.* exempted; and of farms leſs than 150*l.* not to pay for more than five horſes.

Perſons charged by the laſt aſſeſſment to the duties on ſervants, carriages, or horſes having ceaſed before *Nov.* 1, 1797, to keep any, to be exempted from any charge under this act.

If any perſon, charged by the laſt aſſeſſments made as aforeſaid to any of the duties now payable on ſervants, carriages, or horſes, ſhall before the 1ſt of *November*, 1797, have ceaſed to keep any ſervant, carriage, or horſe, or any number of ſervants, carriages, or horſes, for which he ſhall have been ſo charged, and ſhall have remained during the whole interval, between the 10th of *October*, 1797, and the time of hearing the appeal againſt the aſſeſſment to be made under this act, without any ſervant, carriage, or horſe, in lieu of the former, liable to the like duty, then ſuch perſon ſhall, on proof thereof, be exempted from any charge by this act on duties now payable on ſuch ſervants, carriages, and horſes reſpectively. *ſ.* 22.

And alſo perſons having ceaſed to keep carriages from *April* 5, 1797, ſhall be exempted. *ſ.* 23.

Perſons

Perſons not living in cities, or the ſuburbs thereof, or in market towns, and having but one place of reſidence, who ſhall not be rated above the ſum of 25*l.* for their male ſervants, pleaſure horſes, and carriages, ſhall be aſſeſſed for their manſion houſes as if they contained forty windows only, although they ſhould contain a greater number, ſo far as reſpects the additional rates by this act. *ſ.* 24.

Perſons not living in cities or market towns, having but one reſidence, and rated not above 25*l.* for male ſervants, horſes, and carriages, not to be aſſeſſed for their manſion houſes, but for 40 windows.

Every perſon occupying a farm at the time of any aſſeſſment being made of the ſaid additional rates, by virtue of this act, on horſes, by the ſaid two acts of the thirty-ſixth and thirty-ſeventh years of the reign of his preſent majeſty, before mentioned, and who ſhall quit the ſaid farm, in purſuance of any notice given before the 1ſt of *December* 1797, ſhall be entitled to an abatement of the ſaid additional rate, for the whole of ſuch horſes kept for the purpoſes of huſbandry upon ſuch farm, which ſuch perſon ſhall ceaſe to keep after having quitted the ſaid farm; and the aſſeſſment made upon ſuch perſon ſhall, on proof of ſuch perſon having ceaſed to keep any number of ſuch horſes, be entitled to an abatement in reſpect of ſuch number, as aforeſaid, of the ſaid horſes. *ſ.* 25.

Occupiers of farms quitting them in purſuance of notice given before *Dec.* 1, 1797, to have an abatement of the additional duty for horſes kept for huſbandry thereon, and not uſed after.

Provided alſo, that if any perſon who ſhall, previous to the firſt day of appeal under this act for the diſtrict where ſuch perſon reſides, have inrolled himſelf in any regiment, corps, or troop of yeomanry cavalry, raiſed by virtue of an act, paſſed 34 *G. III.* entitled, *An act for encouraging and diſciplining ſuch corps or companies*, &c. *during the preſent war*, ſhall not have obtained his exemption for one horſe, mare, or gelding, in purſuance of an act of 36 *G. III. for granting to his majeſty ſeveral additional duties on horſes kept for riding, or drawing certain carriages, therein mentioned*, in the laſt aſſeſſment made for the year ending the 5th of *April* 1798, then on proof of his being entitled to ſuch exemption, and on production of a certificate to be made out at any time previous to his making ſuch appeal of his ſervice in ſuch regiment, corps, or troop, as directed by the ſaid laſt mentioned act, the perſon ſo enrolled and ſerving ſhall be aſſeſſed to the ſaid additional rate in like manner, and at the like rate, as if ſuch exemption had been allowed. *ſ.* 26.

Perſons having previous to the firſt day of appeal entered into the yeomanry cavalry, not having obtained exemption for a horſe under 36 *G. III. c.* 16, in the laſt aſſeſſment, to be aſſeſſed to the additional duty, as if the exemption had been allowed.

The additional duty on houſes or windows payable by perſons removing when to ceaſe.

Where any perſon charged to the duties now payable on houſes, windows, or lights, or on inhabited houſes, ſhall remove from the houſe in reſpect whereof ſuch charge ſhall have been impoſed, the aſſeſſment made by virtue of this act, ſo far as relates to the duties payable in reſpect of ſuch houſe, ſhall ceaſe from the day on which notice ſhall be given of ſuch removal to the collectors or aſſeſſors, or any two of them, of the place where ſuch houſe is ſituate, and the ſucceeding occupier ſhall become chargeable to the ſaid additional rate, in reſpect of ſuch houſe, from the day he ſhall become the occupier thereof, and the commiſſioners ſhall cauſe an aſſeſſment to be made on ſuch ſucceeding occupier, on the amount of the duties payable in reſpect of ſuch houſe, and alſo on the amount of ſuch other of the ſaid duties now payable, to which he was or ſhall be liable to be aſſeſſed: Provided that the perſon ſo removing ſhall be liable to be again charged to the ſaid additional rate, in reſpect of any other which he may occupy after ſuch removal; and alſo on the amount of ſuch other of the ſaid duties now payable, to which ſuch perſon was aſſeſſed previous to ſuch removal, and ſuch charge, in reſpect of ſuch other houſe, ſhall commence from the time he ſhall become the occupier of ſuch other houſe, and ſhall be paid on the inſtalment next enſuing. *ſ.* 27.

Perſons ſo removing liable to additional duty for any other houſe they may occupy, and alſo for any other duty to which aſſeſſed previous to removal.

Perſons charged by the laſt aſſeſſment who ſhall have removed.

Where any perſon charged to the ſaid laſt-mentioned duties on houſes, windows, or lights, or on inhabited houſes, by the laſt aſſeſſment ſhall have removed from the houſe in reſpect whereof he ſhall be aſſeſſed, he ſhall not be charged to the ſaid additional rate on the amount of the duties payable in reſpect of ſuch houſe, but the preſent occupier (if any) ſhall be chargeable therewith. *ſ.* 28.

Perſons removing into new houſes.

If any perſon ſhall remove from any dwelling houſe into any newly erected meſſuage, not before inhabited, he ſhall not be liable, during the continuance of the rates impoſed by this act, to be aſſeſſed to the ſaid additional rate or duty, at more than the amount of the ſaid rate, which by virtue of this act was or ought to be charged in reſpect of the houſe from which ſuch perſon ſo removed. *ſ.* 29.

Act not to extend to additional

Nothing herein contained ſhall extend to charge with the ſaid additional rate, any perſon in reſpect of any additional

ditional clock, watch, or timekeeper, kept, used, or worn after the 5th of *January* 1798, or in respect of any clock, watch, or timekeeper, where such person shall not have been or shall not be charged to the duties now payable on clocks, watches, and timekeepers, within the year ending on the 5th of *January* 1798, in respect of a clock, watch, or timekeeper, kept, used, or worn, previous to the 5th of *January* 1798. *s.* 30.

clocks or watches used after *Jan.* 5, 1798, or to any not charged with duty within the year ending that day.

If any person shall be assessed to the duties on carriages in respect of any additional carriage kept after the passing of this act, and which shall not have been used before the passing of this act, or if any person not charged to the duties on carriages within the year ending the 5th of *April* 1798, shall be assessed in respect of any carriage which hath been kept and used for the first time after the passing of this act, then the person so keeping such carriage shall not be liable to be assessed to the said additional rate in respect thereof, in any sum greater than once the amount of the said duties now payable; and the assessment to be made on once the amount shall commence from the 5th of *April* next after such carriage shall begin to be used; and the assessments so to be made on once the amount of the duties now payable in respect of such carriages, shall be made on such amount separately, and not on the aggregate amount; any thing herein contained to the contrary thereof notwithstanding. *s.* 31.

Persons assessed to the duties on carriages for any additional carriages kept after passing this act, and not before used, or persons not assessed within the year ending *April* 5, 1798, but charged for carriages used for the first time after passing this act, liable only to once the amount of the duty now payable, *&c.*

Provided that the additional rates or duties hereby imposed shall not extend to carriages with less than four wheels, particularly mentioned and described by the name of taxed carts, in an act made 35 *G. III. c.* 109. *s.* 32.

Additional duty not to extend to taxed carts described in 35 *G. III. c.* 109;

Nothing herein shall extend to charge the said additional rate on the amount of the duties now payable on carriages, in respect of any carriage kept by any person licensed to let out horses for hire, in pursuance of an act of 36 *G. III.* and used for the purposes in the said act mentioned, such persons observing the regulations of the said act with respect to such carriages; nor to charge the said additional rate on the amount of the duties now payable on servants, in pursuance of the 25th and 37th *G. III.* in respect of any waiter kept in any tavern, coffee house, inn, alehouse, or in any other house licensed to sell wine, ale, or other liquors by retail; nor to charge the said additional rate on the amount of the

nor to carriages kept by persons licensed to let out horses for hire, pursuant to 25 *G. III. c.* 51; nor to waiters; nor to carriages kept by

coachmakers or others for being let out to hire; nor to publick ſtage coaches or carriages conveying paſſengers for hire, nor to aſſeſſments made under 37 G. III. c. 6, and 23.

duties now payable on carriages as aforeſaid, in reſpect of any carriage kept by any coachmaker or other perſon, for being lent or let out to hire. *ſ.* 33.

Nothing herein ſhall extend to charge the ſaid additional rate in reſpect of any carriages, by whatever name they ſhall be called, kept by any perſon licenſed for that purpoſe, to be employed as ſtage coaches or carriages, for conveying paſſengers for hire. *ſ.* 34.

Nothing herein ſhall extend to charge any additional rate on the amount of any aſſeſſment by virtue of an act of 37 *G. III.* intitled, *An act for enabling his majeſty to raiſe a proviſional force of cavalry*, &c. or by virtue of another act, paſſed in the ſame ſeſſion, entitled, *An act to explain and amend an act, in this preſent ſeſſion*, entitled, '*An act for enabling his majeſty to raiſe a proviſional force of cavalry*, &c.' *ſ.* 35.

Perſons paying a compoſition for hounds, to be aſſeſſed according thereto.

Any perſon keeping hounds, and paying a compoſition for them in lieu of the duty impoſed by an act of 36 *G. III.* entitled, *An act for granting certain duties on dogs*, ſhall not be aſſeſſed to the additional rate by this act, in reſpect of ſuch hounds, in any greater ſum than in the proportion of the rates hereby impoſed, eſtimated on the amount of the ſum paid for ſuch compoſition. *ſ.* 36.

The additional duties on houſes and windows, to be charged upon the occupiers.

The additional rate hereby granted on the duties now payable on houſes, windows, or lights, or on inhabited houſes, ſhall be charged only upon the occupiers for the time being, of the houſes or tenements in reſpect whereof the ſaid duties now payable are charged, and not on the landlord who lets the ſame (except as herein-after mentioned), any covenant or agreement made or entered into previous to the paſſing of this act, relative to the payment of any duties to be impoſed upon ſuch houſes, &c. or upon ſuch occupiers in reſpect thereof, or to be impoſed on the amount of the ſaid duties now payable, to the contrary notwithſtanding. *ſ.* 37.

Where the landlord is charged to the ſaid duties now payable, the amount to be added to the aſſeſſment made upon the oc-

Where the landlord of any houſe is charged to the ſaid duties now payable, then the amount of ſuch charge ſhall be added to any aſſeſſment of the ſaid duties now payable, which ſhall have been made upon the occupier before the additional rate hereby impoſed ſhall be computed on ſuch aſſeſſments, and ſuch computation ſhall be made on the aggregate of the ſums contained in ſuch aſſeſſment,

assessment after such addition is made, as if the occupier had been charged with the sum so added; or where no assessment of the duties now payable is made on such occupier, then the amount of the said duties now payable and charged upon such landlord, shall form the basis of the assessment of the said additional rate to be made upon such occupier, which shall be calculated upon the amount thereof, as if the occupier had been charged therewith, subject nevertheless to the exemption hereinbefore declared, or to such abatement as the occupier of such would have been entitled to, if he had been charged to the said duties now payable in respect of such house. *s.* 38.

cupier before computing the additional duty, or where no assessment of the said duties is made on the occupier, the amount charged upon the landlord shall form the basis of the additional assessment on the occupier.

Where any house shall be divided into different stories, tenements, &c. and shall be inhabited by two or more persons or families, the immediate landlord or owner of such house shall be deemed the occupier of, and shall be liable to pay the additional rate. *s.* 34.

The landlords of lodging houses, to be deemed the occupiers.

If any landlord, at the desire of his tenant, shall advance monies for discharging the duties imposed upon him by this act, such landlord shall be entitled to recover such monies, with interest, at the times agreed upon between them, by every of the remedies to which he is entitled for the recovery of his rent; and if any tenant shall, at the desire of his landlord, for the like purpose, advance to him any monies, such tenant may deduct the same, with interest, out of his rent, at such times as shall be agreed upon between them, in the same manner as he is entitled to deduct payments by him made in respect of the land tax. *s.* 40.

How landlords advancing money at the desire of tenants, or tenants at the desire of landlords, to discharge the duties, may recover the same.

Where any person chargeable with any rate hereby imposed, shall be under the age of twenty-one years, the parents or guardians and tutors of such infants, upon default of payment by such infants, shall be liable to the payments which such infants ought to have made; and if such parents, guardians, or tutors shall neglect to pay as aforesaid, they shall be proceeded against in such manner as against any other person making default of payment; and all parents, &c. making payment as aforesaid, shall be allowed all the sums paid for such infants upon their respective accounts. *s.* 41.

Parents or guardians liable for infants, &c.

Where persons charged to any additional rate, shall die, their heirs, executors, and administrators shall be liable to

Heirs, &c. of persons dying, liable for arrears of duty, &c.

to the payment of all arrears of the ſaid rate, at the time of the deaths reſpectively of their anceſtors, teſtators, or inteſtates reſpectively, out of the eſtate which ſhall come into their hands, and alſo to the payment of ſuch further ſums as would have become payable, by this act, from ſuch anceſtors, teſtators, or inteſtates reſpectively, at any time within the year in which ſuch deaths reſpectively happened, and no longer. *ſ.* 42.

Commiſſioners and ſurveyors, &c. appointed to put in execution the acts relative to the duties, now under the management of the commiſſioners for taxes, are to put this act in execution. *ſ.* 43.

Within the bills of mortality, and the pariſhes of *St. Mary-le-Bon* and *Pancras*, the collectors ſhall be appointed by the reſident commiſſioners; and ſuch collectors are required to give ſecurity. *ſ.* 44.

And the duties are to be aſcertained, &c. as the duties now are, under the management of the commiſſioners for taxes. *ſ.* 45.

First meeting of commiſſioners to be on or before *Feb.* 1, 1798.

The ſaid commiſſioners ſhall, in their reſpective counties, ridings, diviſions, ſhires, ſtewartries, cities, boroughs, cinque ports, towns, and places, for which they ſhall be appointed, meet for the firſt time on or before the 1ſt of *February* 1798, and proceed in the execution of this act, in the manner herein directed; and where no particular directions are hereby given, then in ſuch manner as is preſcribed by any act with reſpect to the rates before mentioned, under the management of the ſaid commiſſioners for the affairs of taxes. *ſ.* 46.

Where no ſuch meeting ſhall be held, two commiſſioners for executing this act may meet at any other time; or the commiſſioners at any meeting for carrying into execution any former acts, may execute this act. *ſ.* 47.

Commiſſioners of taxes to cauſe ſchedules to be prepared of the perſons aſſeſſed to the duties now payable in two or more pariſhes, with the amount, and tranſmitted to the commiſſioners of the reſpective diviſions, who, at their firſt meeting, ſhall cauſe the amount of the additional duty to be computed, and ſchedules thereof made. *ſ.* 48.

Copies of certificates of duties to be tranſmitted to the collectors.

A copy of the certificates to be made out, ſhall forthwith be tranſmitted to the reſpective collectors; which ſaid collectors ſhall cauſe notice thereof in writing to be given

given to each person so charged, or left at his place of abode, *s.* 49.

It shall be lawful for any surveyor or inspector of the said duties now payable, to attend any meeting of the respective commissioners; and to inspect any assessment made under the authority of this act, and all such assessments shall, at the request of any such surveyor, be produced for examination; and if he shall find any error in the same or any of them, at any time before the said commissioners shall have signed and allowed the same, which in the judgement of the said commissioners shall require amendment, the said commissioners may amend the same accordingly; and if any error shall be discovered in any assessment, after it shall be allowed, the surveyor or inspector are to certify the same to the said respective commissioners, who may cause the same to be amended, if they deem any amendment requisite. *s.* 50.

Surveyors may attend meetings of commissioners, and inspect assessments, which may be amended.

If any person shall be assessed to in two or more parishes or places, the additional rate shall be charged upon such person according to the aggregate amounts as aforesaid of the respective duties to which such person shall be assessed in such parishes, &c. and the said commissioners are to cause an assessment to be made of the said additional rate, upon any person so assessed in two parishes, &c. upon the amount of the said duties contained in each assessment belonging to the division where they respectively shall act, but nevertheless in proportion to and at the rate before specified for the aggregate amount of the said duties to which such person is assessed in all the said several assessments made in the same, or in different divisions. *s.* 51.

The additional duty on persons assessed to the duties now payable in two places, to be charged according to the aggregate amount, but in proportion to each assessment.

Where two or more persons shall be jointly assessed, in respect of the same dwelling house, and the said persons, or any of them, shall be severally assessed to the said duties now payable in respect of any other dwelling house, or shall be severally assessed to any other of the said duties now payable, the commissioners are hereby required to make an assessment of the said additional rate, on the amount of the duties contained in such joint assessment, upon such one of the said persons so jointly charged, who shall be also severally charged to the said duties now payable to a greater amount than any other of the said persons so jointly charged, unless a certificate, apportioning the

Mode of assessing additional duty on persons jointly assessed to the duties on houses and windows for the same house, and severally assessed for any other house or any other of the duties now payable.

the ſums to which each ſuch perſon ſhall be charged, ſhall be delivered to the ſaid commiſſioners within ſuch time as herein-after is allowed. *ſ.* 52.

Perſons aſſeſſed as joint occupiers or as partners, or if one or more ſhall be aſſeſſed excluſive of the others, the proportions of the duty may be certified to the commiſſioners, who ſhall cauſe the additional duty to be charged accordingly. *ſ.* 53.

Perſons aggrieved by any aſſeſſment, (except on account of income), may appeal to the commiſſioners, who may rectify or vacate aſſeſſments.

If any perſon ſhall think himſelf aggrieved by any ſuch aſſeſſment, by reaſon that the additional rate hath been miſcalculated, or that the ſame, or any part, hath been taken at a different rate than this act directs, or for any other cauſe, except on account of his income, as herein-after is directed, he may appeal to the ſaid commiſſioners; and they or any two of them, are hereby required to hear and determine all ſuch appeals within their reſpective diviſions; and if it ſhall appear, that the additional rate is miſcalculated, or taken at a different rate than this act directs, or that for any other cauſe (except as aforeſaid) any ſuch aſſeſſment is erroneous, then the ſaid commiſſioners are hereby authorized to compute and aſcertain the ſum juſtly to be charged, if any ſum be chargeable thereon, according to the true intent and meaning of this act; and to vacate any aſſeſſment made on any perſon entitled to be exempted therefrom by this act, for any cauſe (except on account of income as aforeſaid); and the determination of the commiſſioners ſhall be final: Provided the ſaid commiſſioners ſhall not, upon the hearing of any appeal, make any alteration in the aſſeſſments of the ſaid former rates whereon the duty by this act hath been aſcertained. *ſ.* 54.

Commiſſioners not to make any alteration in aſſeſſments of former duties.

Appeals to be entered with the clerk to the commiſſioners, and heard within a limited time.

All ſuch appeals ſhall be entered with the clerk to the reſpective commiſſioners, within ten days after notice of ſuch aſſeſſment ſhall be given to, or left with the party intended to be charged thereby, in the manner before directed, and the ſame ſhall be heard and determined within ten days after it ſhall be ſo entered, for which purpoſe a day or days of appeal ſhall be appointed, within the time before mentioned by the ſaid commiſſioners, unleſs the day of appeal from aſſeſſments of the duties now payable on houſes, windows, or lights, or on inhabited houſes, ſhall intervene; on which days reſpectively the ſaid commiſſioners are hereby required to hear and determine all ſuch appeals. *ſ.* 55.

Commiſſioners

Commiſſioners may, if they deem it expedient, nominate aſſiſtant commiſſioners for hearing appeals reſpecting income out of reſidents aſſeſſed to the duties now payable not under 60*l.* making out liſts of the perſons: and aſſeſſors are to give notice to the perſons named in the liſts to aſſemble to qualify. The commiſſioners may exclude unfit perſons from the liſts. *ſ.* 56.

In any place where three fit perſons for aſſiſtant commiſſioners cannot be found, it may be united with ſome contiguous place: and commiſſioners may divide aſſiſtants into committees. Not more than ſeven perſons are to act as a committee. *ſ.* 57, 58, 59.

Aſſiſtant commiſſioners to take the following oath;

Every perſon, before he ſhall act as an aſſiſtant commiſſioner in the execution of this act, is required to take the following oath: (that is to ſay),

'I, *A. B.* do ſwear, that I will faithfully execute the 'office of an aſſiſtant commiſſioner, according to an act, 'paſſed in the thirty-eighth year of the reign of his 'majeſty king *George* the Third, intituled, *An act*, [*Here 'ſet forth the title of the act*], to the beſt of my knowledge 'and judgment.

'So help me GOD.'

Which any two may adminiſter. Penalty for acting without taking it

Which oath any two of the perſons nominated aſſiſtant commiſſioners are hereby empowered to adminiſter; and if any perſon ſhall act as an aſſiſtant commiſſioner, before he ſhall have taken ſuch oath, except in adminiſtering the oath, he ſhall for every ſuch offence forfeit 100*l.* *ſ.* 60.

Aſſiſtant commiſſioners appealing to have no voice.

In caſe of any appeal by any perſon qualified to act as an aſſiſtant commiſſioner for the place where ſuch appeal ſhall be made, the aſſiſtant commiſſioner concerned therein ſhall have no voice, but the ſame ſhall be determined by the reſt of the commiſſioners. *ſ.* 61.

Commiſſioners may act as aſſiſtant commiſſioners.

Provided, that where the ſaid commiſſioners ſhall not deem it expedient to nominate any aſſiſtant commiſſioners, in their reſpective diviſions, &c. the ſaid commiſſioners are hereby required to execute this act in all things appertaining to aſſiſtant commiſſioners, and for that purpoſe to meet when they ſhall think proper to appoint, and at ſuch times as they ſhall find convenient, ſo that this act ſhall be duly executed according to the true intent and meaning hereof; and all the powers hereby directed to

be executed by aſſiſtant commiſſioners ſhall then be veſted in the commiſſioners for executing this act in their reſpective diviſions, as effectually as if the ſaid powers had been ſpecially veſted in the ſaid laſt mentioned commiſſioners. *ſ.* 62.

Commiſſioners are required to appoint the firſt meeting of the aſſiſtant commiſſioners, and to direct the aſſeſſors to give public notice thereof. And at ſuch firſt meeting the time and place of future meeting ſhall be appointed. At the ſecond meeting notice is to be given of intention to appeal, and the commiſſioners are to inform the appellants how they are to proceed. *ſ.* 63.

Perſons may appeal reſpecting income, producing a ſigned declaration, atteſted by two witneſſes, in the form annexed to the ſchedule of the act. Appeals are to be heard in the order they are delivered. Aſſiſtant commiſſioners are to give certificates of claims allowed to commiſſioners, who ſhall amend the aſſeſſments. No claim to be allowed, unleſs verified on oath. *ſ.* 64.

If any ſuch perſon ſhall be prevented from attending to make his appeal he may appeal by his attorney or agent, and tranſmit a declaration, ſigned by ſuch appellant, and atteſted as herein directed, to the reſpective commiſſioners before whom ſuch appeal ſhall be depending, which declaration being verified on the oath, or (being *Quakers*) on the ſolemn affirmation of the appellant, ſhall be as effectual as if he had appeared in perſon, and which oath or affirmation any two juſtices of any county, &c. or any two commiſſioners for executing this act, are empowered to adminiſter, and are alſo required to certify the ſame, at the foot of ſuch declaration, by writing under their reſpective hands. *ſ.* 65.

Guardians, &c. or ſteward's agents from a body corporate, may make declaration for infants, bodies corporate, &c. having firſt made the affidavit in the ſchedule to the act. Appeals of perſons prevented to apply within the time limited, may be received within a time to be allowed by the commiſſioners. *ſ.* 66, 67.

From *April* 5, 1799, the commiſſioners may receive any

Provided, That after the 5th day of *April* 1799, the reſpective commiſſioners may receive the appeal of any perſon, on account of income, againſt an aſſeſſment by virtue of this act, (whether ſuch aſſeſſment ſhall have been

been made in that, or in the preceding year, and whether ſuch perſon ſhall have appealed from the ſame or not, or the income of the perſon aſſeſſed ſhall have been diminiſhed ſince the making the aſſeſſment or not), ſo that ſuch appeal ſhall be made between the 5th and the 20th of *April* in any year, during the continuance of this act, and to proceed therein under the like directions as are hereby preſcribed in other caſes of ſuch appeals; and that any abatement of the ſaid additional rate aſſeſſed on ſuch appellant, which may be made on ſuch appeal, ſhall be allowed according to the rules herein-before preſcribed in ſuch caſes of appeal. *ſ.* 68.

appeals reſpecting income, made between *April* 5 and 20.

Such appeals to be entered with the commiſſioners or their clerk, and heard within a limited time. Eſtimates of income and declarations to be made in the form in the ſchedule to the ſaid act annexed; but where not applicable, according to the knowledge and belief of the party. *ſ.* 69, 70.

Perſons at the end of any year, proving that their incomes fell ſhort of the ſums mentioned in their declarations, are to receive from the receiver-general the over-payment on the aſſeſſment, on certificate of the commiſſioners. *ſ.* 71.

If the income of any perſon be diminiſhed after the time for hearing appeals, he may appeal on giving ten days previous notice, which ſhall be heard before the time appointed for payment of the next inſtalment of the additional duty, and the aſſeſſment may be amended, &c. Appellants on the ground of over-payment, or diminution of income, to make declaration in the form inſerted in the ſchedule to the act. *ſ.* 72, 73.

And the additional rates impoſed by this act, ſhall be payable at the times and in the proportions following; that is to ſay, In ſix inſtalments, *viz.* on the 5th of *April*, the 5th of *June*, the 5th of *Auguſt*, the 5th of *October*, the 5th of *December*, and the 5th of *February*, in every year, and the payments ſhall be made within ten days from the 5th of *April*, the 5th of *June*, the 5th of *Auguſt*, the 5th of *October*, the 5th of *December*, and the 5th of *February*, in every year by equal proportions; the firſt to be paid within ten days from the 5th of *April* 1798; and the ſaid commiſſioners ſhall iſſue out their warrants to the reſpective collectors for the preſent year, ſeven

Additional duties to be paid by inſtalments.

Commiſſioners to iſſue warrants to

the collectors to levy them.

days at leaſt before the firſt of the ſaid payments ſhall be due, for the collecting ſo much of the rates as will become payable within ten days from the 5th of *April* 1798; and the ſaid commiſſioners ſhall, after the ſaid 5th of *April* yearly, iſſue out to the reſpective collectors, their warrants for the ſpeedy collecting the ſaid rates as they ſhall become payable by inſtalments within each year. *ſ.* 74.

Places for which collectors are employed to be anſwerable for them

The county, pariſh, or place for which any perſons ſhall be employed to collect the additional rates, ſhall be anſwerable for their punctually paying unto the receiver-general, ſuch money as they ſhall be charged with under this act. *ſ.* 75.

Collectors, if required, are to give ſecurity, or others may be appointed. If no perſons can be found to give ſecurity, thoſe firſt named by the commiſſioners are to be collectors. No ſecurity or receipt given in purſuance of this act ſhall be chargeable with ſtamp-duty. *ſ.* 76.

Collectors to pay duties to the receiver-general and to have an allowance.

The ſeveral collectors of the ſaid additional rates, ſhall, within ſeven days after the reſpective times appointed for payment of the inſtalments, pay into the hands of the receivers-general, or their deputies, all the monies then received on account of thoſe inſtalments, and ſhall alſo from time to time pay any arrears of inſtalments, which they ſhall receive after the reſpective times hereby appointed, to the ſaid receivers-general, or their deputies, at ſuch times as the receiver-general ſhall appoint; and the ſaid ſeveral collectors, paying the whole ſums by them collected, within the times hereby appointed, ſhall receive for their pains in collecting and paying the money, ſuch ſums as the commiſſioners of taxes with the approbation of the commiſſioners of the treaſury, (due regard being had to the ſize of the diſtrict, and the circumſtances attending the ſame, together with the amount of the ſums collected), ſhall think fit, not exceeding threepence in the pound, which the ſaid collectors are hereby empowered to detain out of the laſt of their ſeveral payments in reſpect of each inſtalment. *ſ.* 77.

Aſſiſtant commiſſioners, with the approbation of the commiſſioners, may employ a clerk to make proper entries in books. The commiſſioners to certify the number of appeals, and the days the clerk has been employed. Commiſſioners for taxes are to ſettle the allowance to the

the clerks to the aſſiſtant commiſſioners, which the receiver-general ſhall pay. *ſ.* 78.

Receiver-general to pay the clerk to the commiſſioners for his pains, what they, with the approbation of the treaſury, ſhall allow. No receiver-general or deputy to have any ſalary, but to have what the treaſury may allow. If ſurcharges of the duties now payable have not been made within the time allowed, they may be made before *April* 5, 1799. Commiſſioners to appoint days for hearing appeals againſt them. No appeal to retard the execution of this act. After allowance of ſurcharges, the commiſſioners may amend aſſeſſments. *ſ.* 79, 80, 81.

After *April* 5, 1798, the commiſſioners are annually to cauſe to be delivered to the aſſeſſors a copy of the certificates of aſſeſſments, who ſhall cauſe ſuch aſſeſſments to be returned with thoſe made for the duties now payable for that year. But if no ſuch latter aſſeſſment be made upon any perſon named in the certificates, the aſſeſſors ſhall return the ſame, with the reaſon to the commiſſioners, who ſhall cauſe the ſums mentioned in the certificates to be collected. If perſons named in certificates ſhall be aſſeſſed after *April* 5, 1798, higher than in the year in which the aſſeſſment under this act ſhall have been made, the aſſeſſment under it ſhall be increaſed proportionably, &c. *ſ.* 82.

If any perſon ſhall be liable to be aſſeſſed to the duties now payable, after *April* 5, 1798, in a diſtrict where he has not been charged under this act, the aſſeſſors ſhall give him notice to produce a declaration ſpecifying certain particulars, and ſhall make the aſſeſſment accordingly, and return a certificate and duplicate to the commiſſioners. If any perſon ſhall not deliver ſuch liſt within the time limited, the aſſeſſor ſhall aſſeſs him as if no aſſeſſment had been made, &c. *ſ.* 83.

If any perſon aſſeſſed in two places be deſirous of paying in one, or after aſſeſſment ſhall remove to another place and be deſirous of paying there, he may give notice to the aſſeſſors, with a declaration of the place where the other aſſeſſment was made, and the proceedings therein ſpecified ſhall follow. *ſ.* 84.

The allowance of any exemption from, or abatement to be made of the ſaid additional rate, ſhall not have continuance for any longer term than the expiration of one

one week after the 5th of *January* next enſuing the allowance of ſuch exemption or abatement; but it ſhall be lawful for any perſon to whom ſuch allowance was granted, to appeal again from the aſſeſſment made by virtue of this act to the commiſſioners in the manner before directed, and on proof, on oath, or affirmation, of the amount of the then annual income of the appellant, the ſaid commiſſioners ſhall continue the ſaid exemption, or allow ſuch abatement as the caſe may require; and all the directions preſcribed for making the appeal to the ſaid commiſſioners, in the firſt inſtance, ſhall be uſed and applied *(mutatis mutandis)* in every other ſubſequent appeal to be made to the ſaid commiſſioners; and the ſaid commiſſioners ſhall have the like powers to determine the matter of ſuch ſubſequent appeals, as for determining appeals in the firſt inſtance. *ſ.* 85.

All aſſeſſors and collectors are hereby required to be aiding and aſſiſting the ſurveyor or inſpector, in the execution of the powers given to them by this act, and in the performance of their reſpective duties; and if any aſſeſſor or collector ſhall neglect ſo to do, in any matter required in purſuance of this act, he or they ſhall be liable to ſuch penalties as aſſeſſors and collectors are for neglect of duty by any act mentioned, relative to the ſaid duties now payable. *ſ.* 86.

The bank ſhall open an account with the treaſury, and carry to their credit all monies authorized by this act to be paid to them, for which receipts ſhall be given, and duplicates if required. Perſons may pay to the bank any ſums without requiring duplicate receipts, which ſums ſhall be deemed voluntary contributions. *ſ.* 87, 88.

Perſons may pay to the bank any ſums, and require receipts and duplicates, which ſums ſhall be deemed to be on account of inſtalments of the additional duty; and the exceſs of ſuch ſums above the additional duty, ſhall be deemed voluntary contributions. Duplicate receipts ſhall be a diſcharge for ſuch inſtalments as the perſon delivering them to the collectors ſhall endorſe thereon, not exceeding the ſums expreſſed therein. One receipt for the whole of the ſums paid to the bank, or ſeparate receipts for ſuch portions as ſhall be required, to be given, and alſo duplicates, &c. *ſ.* 89, 90.

A deli-

A delivery of the duplicate receipts to the collectors, in diſcharge of the whole of the duties, they ſhall, if required, indorſe on the original receipt, the amount and number of inſtalments thereby diſcharged, on production of which the commiſſioners ſhall give certificates, which ſhall be evidence. Perſons delivering to the collectors, receipts of the bank, for not leſs than three inſtalments, to have an allowance of 4*l. per cent. per ann.* for money advanced, not exceeding ſix inſtalments, &c. *ſ.* 91, 92.

The bank may allow diſcount to perſons paying aſſeſſments in advance, not leſs than three inſtalments, giving a receipt and duplicate. The bank may give certificates in lieu of receipts and duplicates thereof. Perſons forging or altering certificates, receipts, or duplicates, or uttering them, to be adjudged guilty of felony, without benefit of clergy. *ſ.* 93, 94, 95.

Monies ariſing from the duties, or received at the bank, to be paid into the Exchequer, and kept ſeparate from all other monies. Monies ariſing from the duties, or paid to the bank, or from other duties granted this ſeſſion, for the ſame purpoſe, not exceeding 7,000,000*l.* to be applied to ſuch ſervices as ſhall then have been voted for 1798. The ſurplus monies, how applied. *ſ.* 96, 97, 98.

Application of monies placed, by virtue of this act, to the account of the commiſſioners for reducing the national debt. Application of the dividends on the capital ſtock redeemed by virtue of this act. When the duties hereby impoſed ſhall ceaſe. *ſ.* 99, 100, 101.

As ſoon as annuities to a certain amount ſhall be purchaſed, the auditor of the Exchequer is to tranſmit a certificate to the treaſury, who ſhall order the charging the additional duty to ceaſe, &c. Any ſurplus in the Exchequer to remain for the diſpoſition of parliament. Application and recovery of penalties. Limitation of actions. The perſons inveſted with the authority of borrowing money for diſcharging debts incurred by building or repairing churches, gaols, &c. may prolong the time for payment, not exceeding three years beyond the ſubſiſting term, with the conſent of the creditors. *ſ.* 102, 103, 104, 105, 106.

SETTLEMENT

SETTLEMENT

By Renting a Tenement of 10*l.* *a Year.*

Settlement by renting 10*l.* a year.

IF a tenement be occupied by ſeveral perſons as partners, and each of them have an intereſt in it to the value of 10*l.* a year, although it be rented in the name of one of them only, they will all gain a ſettlement by reſiding thereon forty days. Thus, in the *K.* v. *the Inhabitants of Seamer*, *Hil. Ter.* 36 *G. III. T. Yates* took a farm of Sir *C. Sykes*, Bart. at *Eaſt Heſlerton*, at the rent of 176*l.* a year, *John Yates* his brother reſided with him upon the farm, the two brothers having agreed to be joint partners in the ſtock and farm, previous to *Thomas's* taking it: but *John* did not conſider himſelf as tenant to Sir *C. Sykes*. *John* advanced 120*l.* towards the ſtock and farm: *Thomas* was the only perſon rated in the pariſh rates, though *John* ſaid he conceived himſelf anſwerable for the payment of his part, and to pay intereſt accordingly. After about ſeven months the two brothers parted; there was no account of receipts and diſburſements: upon parting it was agreed that *John* was to allow 20*l.* out of what he had advanced, and to be repaid the remainder; which took place. The ſeſſions, on appeal, confirmed an order of juſtices for the removal of *John Yates* and his family, from *Eaſt Heſlerton* to *Seamer*, and ſtated the above caſe, for the opinion of the court. The Court were of opinion that this caſe was governed by that of *Little Tew* v. *Duns Tew*, wherein, it was decided, that if a tenement be occupied by ſeveral tenants jointly, and each of them have an intereſt in it to the value of 10*l.* a year, although it was at firſt taken by only one of them, they will ſeverally gain a ſettlement thereby, if they reſide thereon for forty days; and lord *Kenyon*, Ch. J. ſaid that in this caſe whether the pauper were conſidered as a joint tenant with his brother, or as under tenant, he equally gained a ſettlement in *Eaſt Heſlerton*. Both orders quaſhed. 6 *Durnf. & Eaſt*, 554.

M. 36 *G. III.* TROWARD *againſt* CAILLAND, in Error.

FRIDAY, *Nov.* 13.

If, after a grant of a next preſentation to a living, the incumbent be made a biſhop by which the living becomes vacant and the king is intitled to preſent, the grantee may preſent on the next vacancy occaſioned by the death or reſignation of the king's preſentee.

IN an action of covenant, the declaration ſtated that by an indenture, dated 26th of *July* 1791, (after reciting that *Troward* was ſeiſed in fee of the advowſon of the rectory of *Bletchingley*, in *Surry*, of which the reverend *M. Kenrick*, D. D. was then the incumbent, and that *Cailland* had contracted with *Troward* for the abſolute purchaſe of the ſame for 7000*l.*) *Troward*, in conſideration of 7000*l.* granted and ſold the advowſon to *Cailland* in fee; and that *Troward* covenanted that he was ſeiſed in fee of the advowſon, and that it was free from all incumbrances. The declaration then proceeded to ſtate that before the making of the ſaid indenture, to wit, on the 30th of *May* 1745, Sir *Kenrick Clayton*, Bart. was ſeiſed in fee of the advowſon, and that being ſo ſeiſed (the ſaid church then being full of one *J. Thomas*, clerk, the then incumbent thereof,) by a deed poll of that date, in conſideration of 5*s.* and of the counſel and advice of one *M. Kenrick*, Eſq. given to the ſaid Sir *K. Clayton* in his law and other affairs, he granted to *M. Kenrick*, Eſq. his executors, &c. the next preſentation and donation of the ſaid rectory, to have and to hold the ſaid next preſentation donation and free diſpoſition to the ſaid *M. K.* his executors, &c. to preſent one fit and able perſon to the ſaid rectory, &c. as fully as the ſaid Sir *K. Clayton* or his heirs might or could do if the ſaid deed poll had not been made, &c. That afterwards and before the making of this indenture the ſaid *J. Thomas*, on the 1ſt of *June* 1774, was made biſhop of *Rocheſter*, and the ſaid church then became vacant by the promotion of the ſaid *J. Thomas* to the ſaid biſhoprick, whereby the king by reaſon of his royal prerogative became entitled to preſent a fit perſon to the ſaid church; and thereupon the king on the ſaid 1ſt of *June* 1774, preſented *M. Kenrick* in the ſaid indenture mentioned his clerk to the ſaid church ſo vacant, who was afterwards admitted inſtituted and inducted. And that the ſaid church being ſo full of the ſaid *M, Kenrick*, clerk, the ſaid *M. Kenrick*, Eſq. on the 11th of *Auguſt* 1777, by deed aſſigned the ſaid next preſentation to the ſaid *M. Kenrick*, clerk, his executors, &c. by virtue whereof

the ſaid *M. Kenrick*, clerk became and was and ſtill continues entitled to the next preſentation, &c. contrary to the form and effect of the ſaid indenture and of the ſaid covenant made by *Troward* in that behalf, &c.

To this declaration there was a general demurrer. And after argument in the court of Common Pleas where this action was brought, that court gave judgment for the plaintiff below; to reverſe which a writ of error was brought; and the caſe was argued here in *Trinity* term laſt by *Erſkine* for the plaintiff in error, and by *Law* for the defendant in error.

For the plaintiff in error it was contended that the covenant, on which the breach was aſſigned, had not been broken; for that the grant in 1745 of the then next preſentation to *M. Kenrick* was no incumbrance, it having been deſtroyed or ſatisfied by the intervening right of the crown to preſent on the promotion of the then incumbent to the ſee of *Rocheſter*; and that that grant of the next preſentation was not an abſolute right to preſent on the firſt vacancy, but merely a qualified right, ſuch an one as the owner of the advowſon had himſelf, and which was liable to be defeated by the intervening prerogative of the crown in the event that had happened. And ſeveral authorities were referred to.

For the defendant in error it was inſiſted that the grant of the next preſentation in 1745, which was for a valid conſideration, was ſtill in force and unſatisfied; for that the intention of the parties manifeſtly was that an effective right of preſentation ſhould be granted, notwithſtanding any intervening prerogative of the crown, and that a deed conveying ſuch an abſolute right to preſent was good in law; the conſequence of which was that the plaintiff in error had not power to convey the advowſon free from incumbrances according to his covenant. And theſe and other authorities and caſes were cited; *Co. Lit.* 183. *a.* and 379; 8 *Co.* 145. *Salk.* 540. 1 *Show.* 441; *R.* v. The Biſhop of *London*. *Dy.* 35. *b. Marg.* and 228. *b. Marg.* The Biſhop of *London* v. The *Mercer's Company*, 2 *Str.* 925, and *Fitz.* 247; and The *Grocer's* Company *againſt* The Archbiſhop of *Canterbury*, 2 *Bl. Rep.* 770.

After the firſt argument lord *Kenyon*, Ch. J. expreſſed a ſtrong opinion in favour of the defendant in error: but

but a ſecond argument was awarded at the deſire of the plaintiff in error; however, when it was called on in the paper to day, his counſel intimated that no farther argument was intended here; and the court unanimouſly confirmed the judgment of the Common Pleas.

Lord Kenyon, Ch. J. now ſaid—I have looked into all the caſes that were cited on the former day, and concur in opinion with the court of Common Pleas. I think that this caſe may be diſtinguiſhed from that of *Woodley* v. the Biſhop of *Exeter*. I am inclined to give all the weight that belongs to the opinions of ſuch learned judges as thoſe who are ſuppoſed to have determined that caſe; Lord Ch. J. *Hobart*, Mr. J. *Winch*, and Mr. J. *Hutton*. But it is rather extraordinary that Lord *Hobart* has not recorded that caſe in his excellent volume of reports. The caſes in *Winch* are in general well reported: but in the preface to *Benloe's* and *Daliſon's* Reports, it ſeems as if thoſe were not really the reports of Sir *H. Winch*; for it is there ſaid "the book called *Winch's* Reports, but improperly enough aſcribed to that learned judge." And indeed it appears that ſeveral of the caſes in that book were decided after Sir *H. Winch's* death. That caſe, however, cited from *Winch*, differs from this; that was merely a gift of the next turn; and if that turn were taken by ſome other perſon, the gift was defeated: but this was a grant for, what the law calls a valuable conſideration; and it was not intended that the deed ſhould be fruſtrated by the prerogative of the crown interfering. It was a maxim adopted by Lord *Coke*, that the words of a deed ſhould be taken moſt ſtrongly *contra proferentem:* here the grantor intended to convey to the grantee an abſolute right; it was an intention that he might lawfully carry into execution, and we ſhould not give effect to the legal intention of the parties, if we did not decide in favour of the defendant in error. The only thing that ſeems to be in our way is the caſe in *Winch*; and that for the reaſon already given, does not controul our judgment in this caſe.

Aſhhurſt J. declared himſelf of the ſame opinion.

Groſe, J. In the caſe of *Woodley* v. the Biſhop of *Exeter*, Lord *Hobart* meant to rely on the intention of the teſtator; for he ſaid "when he gave him the firſt, it is idle to ſay that he ſhall have the ſecond, for that de-

departs from the meaning of the words; and in every grant the law implies *quantum in ſe eſt*, and no man may ſay that the deviſor did intend to warrant that from ancient titles. So that that caſe is diſtinguiſhable from the preſent; for this was the caſe of a purchaſe, and the grantor intended to warrant the preſentation againſt all other titles. Beſides which, Lord Ch. J. *De Grey* in 2 *Bl. Rep*, 774, ſpeaking of the caſe of *Woodley* v. the Biſhop of *Exeter*, ſaid, that caſe is not clearly ſettled to be law; See *Dyer* 228, in marg." Now the marginal note in *Dyer* is directly contrary to the caſe of *Woodley* v. the biſhop of *Exeter*. And though there is great weight in the obſervation made on that note by the counſel for the plaintiff in error, yet as thoſe notes were added by Ch. J. *Treby*, it cannot be doubted but that there was ſome caſe to the effect there ſtated, though Ch. J. *Treby* might be miſtaken as to the preciſe time of that determination; and that caſe is founded on a clear and undiſputed principle, that the law will not do an injury to any perſon.

Lawrence, J. In *Winch's* Entries *p.* 877. the terms of the deviſe in the caſe of *Woodley* v. the Biſhop of *Exeter* are ſtated, "dedit et legavit cuidam *Johanni Baſſet* filio ſuo primam et proximam advocationem prædiœ eccleſiæ de *L.* quæ primo et proxime contingeret poſt mortem ipſius Arthuri;" which expreſsly confine the power of preſenting to the firſt turn; and therefore the words of that caſe diſtinguiſh it from the preſent.

Judgment affirmed.

Mich: 36 *G. III.*

The KING *againſt* WALKER, CLERK, *and Others.*

An appeal againſt a ſurcharge for the duties on ſervants, &c. muſt be preferred on the day appointed by the commiſſioners under the 25 G. III. c. 43.

THE defendants, who are commiſſioners for the execution of certain acts made for granting duties on ſervants, horſes and carriages in the diſtrict of *Wellingborough* in the county of *Northampton*, were called upon by a rule to ſhew cauſe why a mandamus ſhould not iſſue commanding them to ſtate ſpecifically and ſign the caſe as it appeared on the appeal of the Earl of *Egmont* againſt a ſurcharge made upon him in reſpect of his horſes and ſervants for the year commencing the 5th of *April* 1793, together with their determination thereupon, and to

to cauſe the ſame to be delivered to the earl's agent purſuant to the ſtatute, &c. It appeared plainly that the ſurcharge had been made upon a miſtake of a letter written by Lord *Egmont* to his agent, directing the entry to be made; but the point on which this caſe finally turned was whether the appeal were made in time. The taxes in queſtion were thoſe which had been aſſeſſed for one year from the 5th of *April* 1793, and it was upon this aſſeſſment that the ſurcharge complained of had been made. The laſt appeal day for that year was in *January* 1794, after which in *Auguſt* 1794 the appeal was made, which the commiſſioners were of opinion came too late, and that they had no juriſdiction to hear it. By the 25 *G. III. c.* 43 (impoſing the duties in queſtion on ſervants) *ſ.* 15 and 19, the aſſeſſment of ſuch duties is to be made from the 5th *April* in every year for the year enſuing; and to be collected and paid in the ſame manner as under the 20 *G. II. c.* 3. and *c.* 42. and in 21 *G. II. c.* 10. for raiſing the duties on windows, horſes, &c. and by *ſect.* 35. of the 25 *G. III. c.* 43. "any perſon thinking himſelf aggrieved, may appeal to the commiſſioners, any two or more of whom ſhall and are hereby required to hear and determine ſuch appeal (except where it ſhall appear to the commiſſioners that the appellant ſhall have omitted to deliver in his liſt of ſervants in the manner therein pointed out, &c.) and all ſuch appeals ſhall be heard and determined for the firſt aſſeſſment on ſuch days as the ſaid commiſſioners for the execution of this act, or any two or more of them ſhall appoint, and afterwards on the days to be appointed and in the manner directed by the acts of the 20 and 21 *G. II.* above referred to." The clauſe of appeal in the 25 *G. III. c.* 47. (impoſing the duty on carriages) *ſ.* 30. is expreſſed in the ſame terms as the former. The 21 *G. II. c.* 10. one of the acts referred to in the act of the 25 *G. III.* repeals the clauſe relating to appeals in the 20 *G. II.* the other act referred to; and enacts *ſ.* 7. "that all ſuch appeals as ſhall be made to the commiſſioners between the 25th *March* and the 20th of *Auguſt* yearly, ſhall be heard and determined by the commiſſioners upon ſuch days as ſhall by them be appointed for the hearing of ſuch appeals between the 20th *Auguſt* and 15th *September* following; and that all ſuch other appeals between the 29th

and cannot be made after the expiration of the year within and for which the tax is to be collected.

29th *September* and the 20th *January* following yearly, ſhall be heard and determined by the ſaid commiſſioners upon ſuch other days as ſhall be appointed by them for the hearing thereof between the 20th *January* and the 10th *February* following yearly."

Lowndes now ſhewed cauſe againſt the rule, contending that the appeal came too late. He ſaid it was evident from a review of the acts that the meaning of the legiſlature was that all appeals againſt the duties accruing due within the year ſhould be heard before the 5th of *April* in the year, at which time the collectors were required to pay their collections into the Exchequer, or to account for deficiencies. For this purpoſe the laſt appeal day was to be fixed, as appeared by reference to the 21 *G. II.* at ſome time between the 20 *January* and the 10th *February* in the year for which the taxes were collected. No appeal was preferred at that time, nor even until after the concluſion of the aſſeſſment year, which is on the 5th *April*, when the commiſſioners had no longer any juriſdiction for that purpoſe. Beſides which, Lord *Egmont* never made the return required by the act of parliament.

Perceval, contrà, relied on the 1 *ſect.* of 20 *G. II. c.* 42. which after reciting "that through various accidents the execution of the powers given to the commiſſioners by the act of the 20 *G. II. c.* 3. referred to, had been obſtructed or delayed," enacts that "in all caſes where the commiſſioners have already omitted or ſhall at any time hereafter omit to meet or execute the ſaid powers, or any of them, within or at the time or times or according to the manner preſcribed by the ſaid act, any two or more of the commiſſioners may meet and execute the ſaid powers at any other time or times, and from time to time as there ſhall be occaſion. And they are hereby authorized forthwith, or as ſoon after the time at which ſuch meeting ſhall have been held according to the ſaid act as ſhall be convenient to meet and execute the ſame, ſo as that the ſaid rates and duties may be duly and effectually levied and paid, &c. to his majeſty for the uſes in the ſaid act, notwithſtanding any ſuch omiſſion or defect." He contended that by virtue of this clauſe the commiſſioners might ſtill receive and hear the appeal; and that as the ſurcharge on Lord

Egmont

Egmont had ariſen from a miſconſtruction or miſtake of a letter ſent by him to his agent reſpecting the entry to be made, it was a caſe in which the court might with propriety interfere and aſſiſt him.

Lord *Kenyon*, Ch. J. I think the commiſſioners did right in not hearing the appeal, it not having been preferred within the time appointed by them under the proviſions of the act of parliament, but after the period within which the duties were to be collected and paid into the Exchequer. It is true that in this caſe the money would be certainly forth-coming when called for; but we muſt lay down a general rule applicable to all deſcriptions of perſons upon whom theſe taxes were intended to attach, the neceſſity of which regulation muſt in many caſes be too obvious to inſiſt upon. There has been a miſtake through the whole of this procedure. Where a perſon has various places of reſidence, he ought in ſtrictneſs to ſign a return in each of them, mentioning in which place he intends to pay for thoſe ſervants, horſes, or carriages, which he means to enter: that it ſeems was not done upon the preſent occaſion, whence have originated all the confuſion and miſtake that enſued. There is no doubt but that Lord *Egmont* intended honourably, and the conſtruction put upon his letter was ſtrained; but ſtill the appeal not having been preferred in time, the commiſſioners did right in refuſing to enter upon it.

Per curiam. Rule diſcharged.

His lordſhip added that though it was uſual in applications againſt perſons of this deſcription to grant them coſts where they had acted rightly, yet as the defendants were ſupported on this occaſion by the tax-office, there was the leſs neceſſity under the preſent circumſtances to diſcharge the rule with coſts.

DOCTORS COMMONS.

CRIM. CON.

FRIDAY, came on to be heard in the Conſiſtory Court, before Sir *William Scott*, wherein *J. Boddington*, Eſq. was the plaintiff, and his wife the defendant. The object of this ſuit was to obtain a ſentence of ſeparation, *a menſa et thora*, for adultery.

The learned civilians, on the part of the plaintiff, ſtated

ſtated that Mr. *Boddington* had commenced an action againſt the ſeducer of his wife, to recover a compenſation in damages for criminal converſation. The defendant in that action had ſuffered judgment to go by default, and the ſheriff's jury found a verdict for the plaintiff, with 10,000l. damages. The learned advocates then produced the depoſitions of a number of witneſſes, who proved the marriage of the plaintiff with his wife; that his conduct towards her had been conſiſtent with the character of an affectionate huſband, and that ſhe had committed the crime of adultery.

The learned judge pronounced a ſentence of divorce from bed and board during the natural lives of the parties.

COURT OF DELEGATES.

SINGULAR WILL.

FRIDAY came on to be heard a cauſe inſtituted by the relations of *Hannah White*, an old maiden lady, to try the validity of a paper writing, purporting to be her laſt will and teſtament. This was an appeal from the Prerogative Court.

By this ſuppoſed will, the teſtatrix bequeathed 20l. per ann. to the mother of one of her domeſtic ſervants, for the maintenance of *five favourite cats;* ſhe alſo gave 1000l. to each of the hoſpitals (St. George and Middleſex). But the reſidue of her fortune, which was very conſiderable, ſhe bequeathed (with the exception of a few legacies to her ſervants) to her apothecary.

The relations of the deceaſed oppoſed this will on ſeveral grounds. The firſt was, that the teſtatrix did not intend to make any will, or even if ſhe did, it was not her intention to give the reſidue of her eſtate to her apothecary for any other purpoſe than as a truſtee. Another ground was, that to make a will in favour of a medical man, to the total excluſion of her relations, was a circumſtance of ſtrong ſuſpicion of her having been impoſed upon.

Sir *William Scott* addreſſed the court in ſupport of the will, which he contended had been proved to be the will of the teſtatrix, duly executed, by poſitive evidence, which ought not to be overturned by circumſtances of mere ſuſpicion.

The farther hearing and deciſion of this cauſe was poſtponed.

38 G. III. c. 22. *An Act for ſettling a certain Annuity on* ADAM LORD VISCOUNT DUNCAN, *and the two next Perſons to whom the title of* VISCOUNT DUNCAN *ſhall deſcend, in conſideration of the eminent ſervice performed by him to His Majeſty and the Public.*

[9th March 1798.]

MOST GRACIOUS SOVEREIGN, Whereas your majeſty, by your moſt gracious meſſage to your moſt faithful commons, has been pleaſed to declare, that your majeſty having taken into your royal conſideration the eminent and ſignal ſervice performed by *Adam Duncan* lord viſcount *Duncan*, one of the Admirals of the Blue, on the coaſt of *Holland*, in an engagement in the month of *October*, 1797, with a *Dutch* fleet, under the command of admiral *De Winter*, not only highly honourable to himſelf, but greatly beneficial to your majeſty's kingdoms; your majeſty was deſirous to beſtow ſome conſiderable and laſting mark of your royal favour, and for this purpoſe to grant unto the ſaid lord viſcount *Duncan*, and to the two next ſucceeding heirs male of the body of the ſaid lord viſcount *Duncan*, to whom the title of viſcount *Duncan* ſhall deſcend, for and during their lives, a nett annuity of two thouſand pounds; but your majeſty, not having it in your power to grant an annuity to that amount, or to extend the effect of ſuch grant beyond the term of your majeſty's own life, recommended it to your faithful commons, to conſider of a proper method of enabling your majeſty to grant the ſame, and of extending ſuch annuity to lord viſcount *Duncan*, and to the two next perſons on whom the title of viſcount *Duncan* ſhall deſcend; we, your majeſty's moſt dutiful and loyal ſubjects, the commons of *Great-Britain*, in parliament aſſembled, do moſt humbly beſeech your majeſty that it may be enacted; and be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, that one annuity, or yearly rent of two thouſand pounds, ſhall be payable out of the conſolidated fund; and the ſame ſhall be paid quarterly, free and clear of all taxes and deductions, in manner and form following; (that is to ſay), to lord viſcount *Duncan*, for and during his life and after

Preamble.

A life annuity of 2000*l.* *per ann.* ſettled on lord viſcount *Duncan*, and the two next ſucceeding heirs to his title,

after his deceaſe, unto the two next ſucceeding heirs male of his body, on whom the ſaid title of viſcount *Duncan* ſhall deſcend, during their natural lives; which ſaid annuity, ſhall commence the eleventh of *October*, 1797, the firſt payment to be computed from the ſaid eleventh of *October*, until the fifth of *April*, 1798; and from thenceforth ſhall be payable at the four uſual days of payment in the year; *viz.* the fifth of *July*, the tenth of *October*, the fifth of *January*, and the fifth of *April*, in each year, by even and equal portions. *ſ.* 1.

to commence from *Oct.* 11, 1797, and to be paid quarterly.

The annuity to be paid at the exchequer, without fees.

And it is further enacted, That it ſhall be lawful for the commiſſioners of his majeſty's treaſury, and the high treaſurer and under treaſurer of the exchequer, and commiſſioners of the treaſury for the time being, by warrant under their hands, to direct the auditor of the receipt of the exchequer, now and for the time being, to make forth and paſs debentures, from time to time, for paying the ſaid annuity of two thouſand pounds, as aforeſaid, as the ſame ſhall become due and payable, without any fees or charges. *ſ.* 2.

The warrant for payment of the annuity not to be determinable upon the demiſe of his majeſty, *etc.*

It is further enacted, That after ſigning of ſuch warrant, the ſame ſhall be good, and effectual in law, according to the purport and true meaning thereof, and of this act, and ſhall not be determinable or revocable by or upon the demiſe of his majeſty, (whom God long preſerve!) or of his heirs or ſucceſſors, or by the death or removal of any of the ſaid commiſſioners, &c. *ſ.* 3.

Commiſſioners of the treaſury, chancellor of the exchequer, *etc.* are to do all things neceſſary for the execution of this act, without fees

And it is further enacted, That the commiſſioners of the treaſury, *&c.* and all other the officers and miniſters of the court of exchequer, and of the receipt thereof, ſhall, without fee or reward, do all ſuch acts, matters, and things, as are herein-before directed and required, or ſhall be neceſſary to be done by them, in order to render this act effectual.

The receipt of lord viſcount *Duncan*, and his ſucceſſors, ſhall be a ſufficient diſcharge.

And be it enacted, That the acquittance or acquittances, of the ſaid lord viſcount *Duncan*, and the two next ſucceeding heirs male of his body, ſhall be a good and ſufficient diſcharge for the payment of the ſaid annuity, without any further or other warrant to be ſued for or obtained in that behalf; and that the ſaid annuity, ſhall be free from all taxes, impoſitions, and other charges whatſoever: And in caſe any of the officers of his majeſty's exchequer ſhall refuſe or neglect to pay the ſaid annuity,

annuity, or any part thereof, then the ſaid lord viſcount *Duncan*, and his two next ſucceeding heirs male, on whom the ſaid title ſhall deſcend, may, from time to time, ſue, proſecute, and implead ſuch officers, and recover judgement, and ſue out executions thereupon. *ſ.* 5.

Annuity to be tax-free.

How the annuity may be recovered

It is further enacted, That the ſaid anntity of two thouſand pounds, ſhall be, and the ſame is by this act veſted in the ſaid lord viſcount *Duncan*, and the two next ſucceeding heirs male, of lord viſcount *Duncan*, to whom the ſaid title, &c. ſhall deſcend; and the ſame, or any part thereof, ſhall not at any time hereafter be aliened, conveyed, diſpoſed, charged, or incumbered, by the ſaid lord viſcount *Duncan*, or by either of his two next ſucceeding heirs male, for any greater eſtate, or time, than during the natural life of the perſon ſo aliening, conveying, *&c.* or ſo as to prevent the ſame from deſcending to the next or ſucceeding heir male; to whom the ſaid title ſhall deſcend. *ſ.* 6.

Annuity not to be aliened or incumbered for a longer term than during the life of the poſſeſſor.

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38 *G. III. c.* 21. *An Act for ſettling a certain annuity on* JOHN EARL SAINT VINCENT, *and the two next Perſons to whom the title of* EARL SAINT VINCENT *ſhall deſcend, in conſideration of the eminent ſervice performed by the ſaid* JOHN EARL SAINT VINCENT *to His Majeſty and the Public.*

[9th March 1798.]

MOST GRACIOUS SOVEREIGN, Whereas your majeſty, by your moſt gracious meſſage to your moſt faithful commons, has been pleaſed to declare, that your majeſty having taken into your royal conſideration, the eminent and ſignal ſervice performed by *John Jervis* Earl *Saint Vincent*, one of the Admirals of the Blue, off *Cape Saint Vincent*, on the coaſt of *Portugal*, in an engagement in the month of *February*, 1797, with a *Spaniſh* fleet, under the command of Don *Joſef de Cordova*, not only highly honourable to himſelf, but greatly beneficial to your majeſty's kingdoms; your majeſty was deſirous to beſtow ſome conſiderable and laſting mark of your royal favour, as a teſtimony of your majeſty's approbation of the ſaid ſervice; and for this purpoſe to grant

Preamble.

unto the ſaid *John Jervis* Earl *Saint Vincent*, and to the two next ſucceeding heirs male of the body of the ſaid *John Jervis* Earl *Saint Vincent*, to whom the title of Earl *Saint Vincent* ſhall deſcend, for and during their lives, a nett annuity of two thouſand pounds; but your majeſty, not having it in your power to grant an annuity to that amount, or to extend the effect of ſuch grant beyond the term of your majeſty's own life, recommended it to your faithful commons, to conſider of a proper method of enabling your majeſty to grant the ſame, and of extending ſuch annuity to the ſaid *John Jervis* Earl *Saint Vincent*, and to the two next perſons on whom the title of Earl *Saint Vincent* ſhall deſcend, in ſuch manner as ſhould be thought moſt effectual for the benefit of the ſaid Earl *Saint Vincent*, and his family: We, your majeſty's moſt dutiful and loyal ſubjects, the commons of *Great-Britain*, in parliament aſſembled, duly conſidering your majeſty's moſt gracious intention, do moſt humbly beſeech your majeſty that it may be enacted; and be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, that one annuity of two thouſand pounds, ſhall be iſſuing and payable out of, and charged and chargeable upon, the conſolidated funds; and the ſame ſhall from time to time be paid quarterly, free and clear of all taxes and deductions, in manner and form following; (that is to ſay), To *John Jervis* now Earl *Saint Vincent*, for and during his natural life, and from and after his deceaſe, unto the two next ſucceeding heirs male of the body of the ſaid *John Jervis* Earl *Saint Vincent*, on whom the ſaid title, honour, and dignity of Earl *Saint Vincent* ſhall deſcend, for and during their natural lives; which ſaid annuity ſhall commence and take effect from the fourteenth of *February*, 1797, the firſt payment to be computed from the ſaid fourteenth of *February*, until the fifth of *April*, 1798, and from thenceforth ſhall be payable at the four uſual days of payment in the year; (that is to ſay), the fifth of *July*, the tenth of *October*, the fifth of *January*, and the fifth of *April*, in each and every year, by even and equal portions. *ſ.* 1.

A life annuity of 2000*l. per ann.* ſettling on earl *Saint Vincent*, and the two next ſucceeding heirs to his title,

to commence from *Feb.* 14, 1797, and to be paid quarterly.

N. B. *The five following ſections of this act, are exactly ſimilar to thoſe in* 38 *G. III. c.* 22, *for granting an annuity to Lord Viſcount Duncan.*

38 G. III. c. 26. *An Act to empower His Majeſty to ſecure and detain ſuch Perſons as he ſhall ſuſpect are conſpiring againſt his Perſon and Government.*

[21ſt April 1798.]

WHEREAS his majeſty's enemies are making preparations with conſiderable and increaſing activity for the invaſion of his majeſty's dominions: And whereas theſe deſigns are encouraged by the traitorous practices of wicked and diſaffected perſons within this realm: therefore, for the better preſervation of his majeſty's ſacred perſon, and for ſecuring the peace and the laws and liberties of this kingdom; be it enacted by the king's moſt excellent majeſty, that every perſon or perſons that are or ſhall be in priſon within the kingdom of *Great-Britain* at or upon the day on which this act ſhall receive his majeſty's royal aſſent, or after, by warrant of his ſaid majeſty's moſt honourable privy-council, ſigned by ſix of the ſaid privy-council, for high treaſon, ſuſpicion of high treaſon, or treaſonable practices, or by warrant, ſigned by any of his majeſty's ſecretaries of ſtate, for ſuch cauſes as aforeſaid, may be detained in ſafe cuſtody, without bail or mainprize, until the firſt of *February*, 1799; and that no judge or juſtice of the peace ſhall bail or try any ſuch perſon ſo committed, without order from his majeſty's privy council, ſigned by ſix of the ſaid privy council, till the ſaid firſt of *February*, 1799. *ſ.* 1.

Preamble.

Perſons impriſoned for high treaſon &c. may be detained till *Feb.* 1, 1799, &c.

And it is further enacted, That the act made in *Scotland*, in 1701, (intituled, *An Act for preventing wrongous impriſonment, and againſt undue delays in trials*), in ſo far as the ſame may be conſtrued to relate to caſes of treaſon and ſuſpicion of treaſon, be ſuſpended until the ſaid firſt of *February*, 1799, and that until the ſaid day no judge, juſtice of peace, or other officer of the law in *Scotland*, ſhall liberate, try, or admit to bail, any perſon that is, or ſhall be, in priſon within *Scotland*, for ſuch cauſes as aforeſaid, without order from his majeſty's privy council, ſigned by ſix of the ſaid privy council. *ſ.* 2.

Act in *Scotland* of 1701 for preventing wrongous impriſonment, ſo far as may relate to treaſon, &c. ſuſpended till *Feb.* 1, 1799, &c.

Provided always, That, from and after the ſaid firſt of *February*, 1799, the ſaid perſons ſo committed ſhall have the benefit and advantage of all laws and ſtatutes any way relating to the liberty of the ſubjects of this realm;

From *Feb.* 1, 1799, perſons committed to have the benefit of all laws providing for

the liberty of the subject, *etc.*

realm; and that this present act shall continue until the said first of *February*, 1799. *s.* 3.

Privileges of parliament not invalidated by this act.

Provided always, That nothing in this act shall be construed to extend to invalidate the ancient rights and privileges of parliament, or to the imprisonment or detaining of any member of either house of parliament during the sitting of such parliament, until the matter of which he stands suspected be first communicated to the house of which he is a member, and the consent of the said house obtained for his commitment or detaining. *s.* 4.

Persons against whom indictments for high treason are already found to be tried thereon.

Provided nevertheless, That any person in prison at the time of passing this act, against whom any bill of indictment for high treason have been already found, may be tried on the said indictment, as if this act had never passed. *s.* 5.

COURT OF COMMON PLEAS.

Feb. 13,

BEFORE the Lord Chief Justice of the court of Common Pleas at Guildhall. *Butcher* v. *Nicholson.* This was an action to recover from the defendant, as the acceptor of a bill of exchange, the sum of 40*l.*

The question before the court in this cause was, "whether the bill in question was a fair negotiable bill, drawn in the usual course of trade, and accepted by the defendant, in consideration of value received."

The principal ground on which this action was resisted was, that the bill was a fictitious bill, drawn for the benefit of one Clipson, in whose shoes the plaintiff stood; and that the defendant had received no consideration for his acceptance of it. After many excellent remarks by the chief justice, the jury were of opinion that the bill had been accepted without any consideration, and therefore found a verdict for the defendant.

MODERN DECISION *concerning* HIGHWAYS.

Giving a false certificate of the state of the highways

IF the inhabitants of a parish be convicted on an indictment for not repairing a highway, the court, before they assess a fine on the parish, will inquire into the actual state of the road, and require a certificate from the

the juſtices of the neighbourhood, whether the ſame has been ſufficiently repaired or not. How or when theſe certificates originated, it is difficult to aſcertain; but the practice of receiving them is very general, and of ancient date, and recognized by the courts of law. If, therefore, the juſtices produce a falſe certificate in order to influence the judgment of the court, they may be indicted for conſpiring to pervert the courſe of juſtice; and it is no excuſe that they did not, at the time, know whether or not the road was in repair: for they ought to know that the road is in repair before they agree to certify that it is ſo; and if they do agree to certify to the court that it is, when in fact it is not, that is ſufficient to conſtitute their delinquency, for the producing in evidence a falſe certificate, muſt miſlead a court by giving them falſe information, and thereby the courſe of juſtice is obſtructed and perverted, and a greater offence can hardly be ſtated; it is a crime and indictable. *K. v. Sir Joſeph Mawbey and others, E. 36 G. III. 6 Term Rep. 619.*

After conviction upon an indictment for want of repair, is an indictable offence.

TURNPIKE ROADS.

IF a turnpike act exempts a horſe *attending cattle from paſture* from the payment of toll, ſuch exemption does not extend to diſcharge a horſe *going to fetch* them; for in the caſe of *Harriſon* v. *Brough*, *T. 36 G. III.* it appeared, that by the act for repairing the highways leading to Highgate, certain tolls were authorized to be taken, and among the reſt, for any horſe (except the horſe ridden by the driver of any carriage uſed for huſbandry, or horſe returning *from* paſture, or *attending cattle* for that purpoſe) the ſum of one halfpenny: the plaintiff's ſervant was going on horſeback (the horſe being bridled and ſaddled) to the plaintiff's paſture, in order to *fetch up* two of the plaintiff's cows *from* the paſture: toll was demanded for the horſe, and on refuſal of payment, the defendant, who was toll-gatherer, ſeized the horſe, and detained it till the toll and expences, if any, were paid. On an action of treſpaſs, brought for this ſeizure and detainer, a verdict was taken for the plaintiff, ſubject to the opinion of the court, on a ſpecial caſe, ſtating facts, in ſubſtance as above. In ſupport of the verdict, it was contended, that the exemptions were introduced into the act, for the benefit of huſbandry, and that it would be almoſt ridiculous to ſay, that the

Exemption from toll.

the horſe ſhould be exempted *when returning with the cattle*, but ſhould yet be liable to the toll *when going to fetch the cattle* from paſture. But by Lord *Kenyon*, Ch. J. the queſtion is, whether a horſe *going to fetch* cattle, was *attending* the cattle at the time? Barely ſtating the queſtion is anſwering it. When the horſe is attending the cattle, the turnpike men can ſee what is paſſing, and of courſe can judge when the party is intitled to the benefit of the exemption: but he has no means of knowing whether a horſe is going to fetch cattle. If this were allowed to be an exemption, it would open a great door to fraud on the turnpike men. I am, therefore, of opinion, that the plaintiff is neither within the words nor the ſpirit of the exemption. 6 *Durnf. & Eaſt*, 706.

COURT OF EXCHEQUER.

FEB. 13.

Before the Lord CHIEF BARON *and a Special Jury.*

THIS was an information at the inſtance of his majeſty's attorney-general, for the confiſcation of the Swediſh ſhip Ebenezer, and all her cargo.

This information was founded on the ſtatute preſcribing the quantity of liquor to be admitted on board veſſels entering the port of London, which ſtates, that none, except what is intended for ſtores for the veſſel, ſhall be contained in a veſſel of leſs dimenſions than 60 gallons.

There was a ſecond count, charging the captain with an attempt to drive on an illicit bargain for about 40 gallons contained in one caſk. And here the moſt poſitive and flat contradictions were ſworn to, ever noticed in a court of juſtice. The cuſtom-houſe officers ſwearing they were informed of the tranſaction, and in conſequence rejected the bribes tendered; and the intended purchaſers ſwearing as poſitively to their being parties to and conſenting to the intended purchaſe.

In ſumming up, this circumſtance was peculiarly adverted to by the Lord Chief Baron, who, however, explained to the jury that this was not the only point on which the cauſe turned, for that the evidence on both ſides proved that liquor unentered, in a caſk of illegal dimenſions, was proved to be on board.

Verdict for the crown—*Forfeiture of ſhip, cargo, &c.*

IRELAND.

HIGH TREASON.

AT the aſſizes of Trim, —— Fitzgerald, Eſq. was tried on an indictment for high treaſon, containing two counts—the firſt for *compaſſing and imagining the death of the king*, and the ſecond for *adhering to the king's enemies* within the realm, contrary to the ſtatute of the 25th of *Edward* the Third.

There were four overt acts of treaſon laid to ſuſtain each of theſe counts.

Mr. Jonah Barington ſtated the caſe againſt the priſoner, and the law reſpecting treaſon, in a very long and able ſpeech; and then called Andrew Garraty, the only witneſs examined. The ſubſtance of this man's evidence was, that Mr. Fitzgerald, knowing that he had been a ſoldier, engaged him to exerciſe a body of men in the month of *March* laſt, in order that they might be diſciplined in the month of *May* following—that he went accordingly to an open field, where he ſaw a large body of men divided into different bodies of twelve each, under the command of the priſoner, where he held a converſation with him on teaching theſe men diſcipline.

Mr. M'Nally croſs-examined the witneſs, who acknowledged he never ſaw arms with the men, of courſe never taught them to exerciſe; confeſſed he had been a dragoon, and had deſerted from his regiment for loſing his piſtol; that he was a ſtranger to Mr. Fitzgerald till ſent for by him; that he believed his own character was not good, and ſuppoſed it might be impeached as bad by credible witneſſes. In ſeveral inſtances this witneſs contradicted himſelf, and the lawyers for the crown reſted their caſe on his evidence.

Mr. M'Nally now ſtated the caſe of the gentleman at the bar. He ſaid it was unneceſſary for him to queſtion the general law of treaſon as laid down by Mr. Barington, and ſpoke highly of the benignity of the law, which permitted him to ſtand forward an advocate for the priſoner. He inſiſted, that the only overt act to which the evidence applied, was not treaſon; and that, if it was, the evidence was not ſuch as the ſtatute required. He ſtated the nature of evidence neceſſary to ſupport the charge; that it muſt not be inference or deduction, but plain,

ſubſtantial or irrefragable proof. He went at large into the hiſtory of evidence given by accomplices, and quoted the opinions of lord Hale, whoſe great character he deſcribed, ſerjeant Hawkins, &c. to ſhew, that though ſuch men were competent witneſſes, they deſerved no credit but when ſtrongly corroborated by circumſtances, which was not the caſe of the preſent witneſs. The credit of this witneſs, he ſaid, was not only ſhaken by his own teſtimony, but he would prove him bad through the whole courſe of his life, and on the infamy of his character would be eſtabliſhed the innocence of the injured gentleman at the bar.

Several reſpectable witneſſes were then called and examined by Mr. Eſpineſſe, and they ſeverally declared that the witneſs ought not to have credit in a court of juſtice, giving evidence on his oath.

The counſel for the crown declined to ſpeak to evidence; Mr. Eſpineſſe alſo waved his privilege.

The ſolicitor-general, who tried the cauſe, in a ſhort charge, was of opinion, that the fact of embodying men, though unarmed, amounted to high treaſon, and obſerved, that the jury, therefore, had only to decide on the credit of the witneſs.

The jury, after retiring for a few minutes, brought in their verdict *Not Guilty*.

SITTINGS AT GUILDHALL.

COURT OF COMMON PLEAS.

WEDNESDAY, *June* 6.

BUTCHER *v.* LANGLEY, *and Others.*

THIS was an action which the court conſidered to be of importance to the public. The plaintiff was the owner of a wherry, employed on the river Thames, and brought his action againſt the defendants, who are the proprietors of a barge, to recover a compenſation in damages for the injury done to his wherry by the plaintiff's barge coming againſt it.

The defence to this action was, that the damage done to the wherry was not owing to the negligence of the defendants or to his ſervants, but to the negligence of the

the plaintiff in leaving the boat without a proper perſon to take care of it.

The queſtion, therefore, for the opinion of the jury was —"Whether the accident ought to be aſcribed to the negligence and inattention of the plaintiff, or he defendants." Several witneſſes were examined on both ſides, who contradicted each other with reſpect to the true cauſe of the accident.

After a long trial, the learned judge ſaid, it was of great importance to the lives of his majeſty's ſubjects, and to the navigation of the river Thames, that all perſons who have the conduct of barges, ſhould know that the law expects them to be extremely careful not to run againſt boats, or any ſmall craft, and that they muſt be reſponſible for any damage that is ſuſtained by their negligence or miſconduct. In the preſent caſe, his lordſhip ſaid, it was for the jury to conſider, whether the damage done to the plaintiff's boat was owing to the negligence of the defendants, or their ſervants.

The jury, after ſome deliberation, found a verdict for the plaintiff.—Damages *One Pound Fifteen Shillings*, being the expences of repairing the boat, which in this action carries all the coſts.

STATE TRIALS:

SPECIAL COMMISSION AT MAIDSTONE.

MONDAY, *May* 21.—HIGH TREASON.

The KING *againſt* ARTHUR O'CONNOR, *Eſq.* JAMES O'COIGLEY, JAMES JOHN FIVEY, JOHN BINNS, JOHN ALLEN, *and* JEREMIAH LEARY.

MR. JUSTICE BULLER, Mr. Juſtice Heath, Mr. Juſtice Lawrence, and Mr. Serjeant Shepherd, took their ſeats on the Bench by ſeven o'clock. Previous to the names of the jurors being called over,

Mr. Plomer obſerved, that it was far from his intention to interrupt the proceedings of the day by any unneceſſary obſervation; but he felt it his duty, in order to preſerve the purity of the adminiſtration of public juſtice, not to loſe a moment in ſtating the contents of an affidavit which had been juſt ſworn. It reſpected a charge

of the foulest nature; a charge of one of the most daring attempts to violate the public justice of the country—of one of the grossest contempts of the court that ever was practised. The charge was nothing less than that of a wicked attempt to tamper with the jury appointed to try the guilt or innocence of the prisoners at the bar, and was founded on the affidavit of a most respectable person, concerning whose veracity and honour there was not the slightest doubt. Their lordships would be surprised to hear that endeavours had been made, in conversations, by indirect means, with jurors known to be such, to prejudice their judgments, and induce them to come into court with minds predetermined to convict the prisoners at the bar, guilty or not guilty. The court would be still more surprised, when they heard that the person against whom he had to complain bore the sacred character of a clergyman; yet he should state, under his own hand-writing, an account of the conversation he had with several of the jurors; and he had no doubt but the court, when in possession of the facts, would mark his conduct by the severest reprehension.

[The letter was then read from the Reverend Arthur Young, of which the following is an extract; the observations in the concluding part not being relevant to the business.]

"Dear Sir, I dined yesterday with three of the jurymen of the Blackburn Hundred, who have been summoned to Maidstone to the trial of O'Connor and Co. and it is not a little singular, that not one yeoman of this district should have been summoned to an assize for this county, nor to any of the quarter-sessions, excepting the Midsummer, for more than fifty years. These three men are wealthy yeomen, and partizans of the *high court party*. Now, this is as it ought to be; and, as they are good farmers, and much in my interest, to be sure, I exerted all my eloquence to convince them how absolutely necessary it was at the present moment, for the security of the realm, that the *felons* should *swing*. I represented to them, that the acquittal of Hardy and Co. laid the foundation of the present conspiracy, the Manchester, London Corresponding Society, &c. &c. I urged them, by all possible means in my power, to *hang them through mercy, a memorial to others*; that had others suffered,

ſuffered, the deep laid conſpiracy which is coming to light would have been neceſſarily cruſhed in its infancy. Theſe, with many other arguments, I preſſed with a view that they ſhould go into court avowedly determined in their verdict, *no matter what the evidence.* An innocent man committed to gaol, never offers a bribe to a turnkey to let him eſcape. O'Connor did this to my knowledge; and, *although the judge is ſufficiently ſtern, and ſeldom acquits where hanging is neceſſary*, the only fear I have is, that, when the jury is impanelled, the *blues* may gain the aſcendancy. In ſhort, I preſſed the matter ſo much upon their ſenſes, that if any one of theſe three is choſen, I think ſomething may be done. Thoſe three men have gained their good fortunes by farming, and I think they are now thoroughly ſenſible that they will loſe every ſhilling in acquitting theſe felons."

This letter, continued Mr. Plomer, was under the hand-writing of the Rev. Arthur Young, and was addreſſed to Gamaliah Lloyd, Eſq. a gentleman of Bury St. Edmund's. Notice had been given to Mr. Young of this application, and he had acknowledged the letter to be his writing. He had been called on to ſtate who the three yeomen of Blackburn were, in order that they might be made the ſubjects of diſtinct challenge, but he had refuſed to name them. Mr. Plomer ſaid, he was perſuaded it could not be the wiſh of the court or the proſecutors, that the priſoners at the bar ſhould be brought to trial under the prejudice which had been raiſed in the minds of thoſe who were to try them; and he therefore truſted the court would co-operate in endeavouring to prevent the jurors who had been ſo prejudiced from conſtituting a part of the jury.—He added, that it was his duty to accompany theſe obſervations with an application perſonally againſt Mr. Young.

Mr. Juſtice Buller ſaid, it was an offence that *ought not to go unpuniſhed*; but he feared the power of the court to puniſh would ceaſe with the commiſſion.

Mr. Young was called, but did not make his appearance.

Mr. Attorney-General ſaid, he was perfectly perſuaded he ſhould be believed by all preſent, when he ſtated, in the name of God and his country, that he had heard, with great affliction, the circumſtance juſt mentioned; and

and he had no difficulty in ſaying, if, upon enquiry, he ſhould have reaſon to be ſatisfied the charge was true, he ſhould think he deſerved to be immediately diſmiſſed from his office, if he heſitated one moment in uſing his power to the utmoſt, in order to bring that man to juſtice who had dared to prejudice the minds of perſons exerciſing the office of jurors.

The Attorney-General then not only pledged himſelf to bring Mr. Young to juſtice, if he was guilty, but he deſired the names of all the jurors ſummoned from the Hundred of Blackburn ſhould be ſtruck out of the pannel.

The clerk of the arraigns proceeded to call the jurors. —There were ſeveral challenges for cauſe on behalf of the priſoners.—Among the latter, Thomas Raikes, Eſq. of Bromley, was challenged on the oath of Mr. Folkes, who ſtated, that on a former occaſion, when the priſoners were in court, Mr. Raikes enquired of the deponent their names, and upon being informed, he looked ſternly and ſavagely at them, clenched his fiſt, and exclaimed *damned raſcals*. His eligibility was tried by two jurors, who determined he ſhould be rejected.

The jury was at length formed, and conſiſted of the following perſons:

Charles Haſkins, Weſt Wickham, Foreman.
William Small, Farmer, Shoreham.
William Cronk, Farmer, Seal.
Richard Ray, Farmer, Sevenoaks.
James Chapple, Diſtiller, Sevenoaks.
Michael Saxby, Farmer, Penſhurſt.
Silas Newman, Farmer, Wrotham.
Iſaac Tomlin, Eſq. Wrotham.
Thomas Henham, Farmer, Eaſt Peckham.
Walter Barton, Farmer, Eaſt Peckham.
John Miller, Gentleman, Yalding.
John Simmons, Farmer, Yalding.

The indictment having been briefly ſtated,

Mr. Attorney-General ſaid, that in diſcharge of the duties of the office he held, he had been moſt imperiouſly called on to lay before a grand jury of the county, the charge contained in the indictment, which the jury were now ſolemnly ſworn to try.

The charge made by this indictment was, in the language

guage of the law, firſt, that of compaſſing the king's death; ſecondly, adhering to his enemies, giving them aid and comfort; and thirdly, inviting ſtrangers and foreigners to invade this land. With reference to each of theſe charges, the indictment ſtated various overt acts, the meaning of which he would explain. In order that perſons might know the nature of a charge brought againſt them in courts of juſtice, and be prepared for their defence, the law not only required it ſhould be imputed they were guilty of compaſſing the king's death, adhering to his enemies, or inviting ſtrangers and foreigners to invade the land, but it alſo required that the indictment ſhould detail thoſe facts and circumſtances which proved ſuch compaſſing, adhering, or inviting to invaſion; and it was neceſſary that the overt act ſhould be proved by two witneſſes. With reſpect to thoſe facts or overt acts, he would proceed to detail them with as few obſervations of his own as poſſible. On the 27th of February laſt, three of the priſoners at the bar, namely, Quigley, Allen, and Leary, came from Whitſtable to the King's Head, at Margate; Quigley, under the name and character of captain Jones, Allen in the character of his ſervant, though he really was not ſo, and Leary, the ſervant of O'Connor, who waited on his maſter. They had not been at the King's Head a quarter of an hour, when Mr. O'Connor, who went by the name of colonel Morris, and Binns, who aſſumed the name of Mr. Williams, arrived. They remained at the King's Head that evening and part of next morning. The next morning, while they were meditating the removal of their baggage, for a purpoſe of which there could be no doubt, they were arreſted by Rivett and Fugion, two Police officers. Quigley was ſitting at breakfaſt in a room, in which was a great coat, containing in the pocket a paper, which would be ſtated to the jury.—He ſhould have mentioned, that on the preceding evening, when Quigley, Allen, and Leary came to the King's Head, they brought a very large quantity of baggage, deal and mahogany boxes, and leather caſes, which, notwithſtanding their value, ſo apprehenſive were the priſoners of the danger of owning them, that they denied all knowledge of them or their contents. He would now ſtate the paper found in a pocket-book in Quigley's great coat, fully perſuaded, when

when he had gone the length of proving, in the manner required by law, that any man or number of men had ſuch a paper in their poſſeſſion, for the purpoſe of carrying to thoſe to whom it was addreſſed, it would be impoſſible for the jury to ſay ſuch a circumſtance did not amount to the offence of high treaſon. The paper was in theſe words:

The Secret Committee of England, to the Executive Directory of France.

CITIZENS DIRECTORS!

"WE are called together on the wing of the moment to communicate to you our ſentiments. The citizen who now preſents them to you, and who was the bearer of them before, having but a few hours to remain in town, expect not a laboured addreſs; but plainneſs is the characteriſtic of republicans. The power of our tyrants to diſturb the peace of the whole world is at an end; they have tried to raiſe a kind of forced loan. It has failed. Every tax diminiſhes that revenue it was intended to augment, and the voluntary contributions have produced nothing. The ariſtocracy pay their taxes under the maſk of voluntary contributions. The poor workmen in manufactories are forced to ſubmit to pay towards them, under threats of being turned out of their employments if they do not ſubſcribe. Even the ſoldiers have been compelled; but by far the greater part reſiſt, and the few that have ſubmitted have either been cajoled through fear, or compelled by force. Affairs are drawing to an awful criſis. Tyranny, ſhaken to its baſe, is ready to expire in its own ruins. With the tyranny of England, that of all Europe muſt fall. Haſte then, Great Nation, pour forth thy gigantic force; let the baſe deſpots feel thine avenging ſtroke, and let one oppreſſed nation carol forth the praiſes of France at the Altar of Liberty. We ſaw with rapture your proclamations; they met our warmeſt wiſhes, and removed doubts from the minds of millions. Go on! Engliſhmen will be ready to ſecond your efforts. Engliſhmen are no longer blind to the ſacred flame of liberty. Every day they ſee themſelves bereaved of ſome part of the democracy of their conſtitution—Injuries are added to injuries, and they find that in order to poſſeſs a conſtitution they muſt make one.

Parliament

Parliament declaimers have been the bane of the people; they wiſh to riſe on our deſtruction; they wiſh to ſhare with the government in the national plunder; and it is the intereſt of each to keep the people in the dark. They have pulled off the diſguiſe; and the very men, who, under the ſemblance of moderate reform, only wiſh to climb to power, are now willing to fall into the ranks of the people; yes, they have fallen into the ranks, and there they muſt ever remain, for Engliſhmen can never place confidence in them; already have the Engliſh fraternized with the Iriſh and the Scotch, and a delegate from each now ſits with us. The ſacred flame of liberty is rekindled; the holy obligation of brotherhood is received with enthuſiaſm. Even in the fleets and armies it makes ſome progreſs; diſaffection prevails in both, and united Britain pants to burſt her chains; fortunately we have no leader, avarice and cowardice pervade the rich: but we are not the leſs united. Some few of the opulent have indeed, by ſpeeches, profeſſed themſelves the friends of democracy, but they have not acted, they have conſidered themſelves as diſtinct from the people, and the people in return will conſider their claims as unjuſt and frivolous. They wiſh to place us in the front of the battle, that unſupported by the wealth they enjoy, we may periſh, while they may hope to raiſe themſelves on our ruin; but let them be told, that though we may fall through their criminal neglect, they can never enſlave us, and that Engliſhmen once free will never ſubmit to a few political impoſtors. United as we are, we only wiſh to ſee the hero of Italy, and the invincible army of the Great Nation. Myriads will hail their arrival, and they will ſoon finiſh the campaign. Tyranny will vaniſh, and your veteran troops will return to their native country, there to enjoy that happineſs which they ſhall have purchaſed with their blood.—6th *Pluvoiſe*, A. R. G."

He then proceeded to ſtate the circumſtances under which the priſoners had gone from London, in order to ſhew their connection with each other. Binns, who went by the name of Williams, occupied the lodgings of his brother, B. Binns, at the houſe of Evans, ſecretary to the London Correſponding Society, Plough-Court, Fetter-lane; and it would be found that previous to the 21ſt of February, the priſoner, Binns, had hired a room,

which formed part of the apartments of a Mrs. Smith, in the ſame houſe. On the 21ſt Binns left London for the purpoſe of hiring a veſſel to go to France, to carry the above paper, and ſuch other intelligence as might be neceſſary. He went to Graveſend, took the coach to Rocheſter, and proceeded to Canterbury, where he applied to two perſons of the names of Claris and Mahony, and, pretending to have ſome concern in the ſmuggling line, expreſſed a wiſh to have a recommendation to ſome perſon at Whitſtable, in order to procure a veſſel to go acroſs. They mentioned the names of ſeveral perſons who let out veſſels. Binns then went on to Whitſtable, and applied to the perſon whom he ſhould call to prove the fact, for a veſſel to go to Fluſhing. It was repreſented to him that he could not have a boat to go there, on account of its being an enemy's port, and an embargo being laid on all veſſels. He then propoſed that the veſſel ſhould go to Havre, Calais, Dunkirk, or ſome other port; but on its being ſtill repreſented how extremely hazardous ſuch a ſervice was, Binns obſerved there was no hazard at all, and that he had the means of inſuring the ſafe return of the veſſel; and the reſult was, it was propoſed that 300 guineas ſhould be depoſited by Binns in the Canterbury bank, as a ſecurity for the return of the veſſel, and that 100 guineas ſhould be given for the trip, in caſe the veſſel ſhould come back. This happened on Friday the 23d of February. Binns thought theſe terms too extravagant, and therefore returned to Canterbury next morning, and from thence went to Deal on the Saturday, where he there made the ſame ſort of propoſitions to the witneſſes who would be called, as he had done at Whitſtable. He agreed to give 60 guineas for a boat to go to Fluſhing, Havre, &c. On Saturday evening he returned to Canterbury with the intention of proceeding to London, before the other priſoners at the bar ſhould have ſet out, but he did not arrive in London before they had departed on board the Whitſtable hoy. It was now neceſſary to ſtate the conduct of the other priſoners: On the Saturday they had returned from Canterbury. O'Connor, who had a lodging in Stratton-ſtreet, was intimate with a perſon of the name of Bell, a merchant, in Charter-houſe-ſquare, at whoſe houſe he occaſionally dined and ſlept, and where Quigley, under the aſſumed

aſſumed name of Captain Jones, occaſionally dined, as the friend of O'Connor. On the Saturday O'Connor and Quigley dined with Mr. Bell, and there O'Connor ſlept; Quigley ſlept at No. 14, Plough-court, the lodging of Allen, who repreſented his ſervant. The attorney-general ſaid, before he proceeded to bring the parties together on board the Whitſtable hoy, he would ſtate, that O'Connor wrote a letter to Binns, under the name of Williams, at Canterbury; which letter he deſired his friend Bell to ſend. It was to this effect: "Dear friend, I ſet off to-morrow morning in the Whitſtable hoy, and hope to be with you at night: I ſhall take all the parcels you ſpeak of with me. I am your's, ſincerely.

JAMES WALLACE."

On the morning of the day when the baggage came on ſhore, part of it was ſearched by the Cuſtom-houſe officers; and the other part, they were told by the priſoner Leary, could not be ſearched, becauſe he ſaid his maſter, Colonel Morris, had the keys of the boxes, and he was going to the Weſt Indies. The three priſoners ſeemed very careful leaſt the baggage ſhould be ſearched. The whole of it was then ſent in a cart to Margate; and they walked with the perſon whom the cart belonged to, until they arrived at Margate. In the mean time Binns had gone to Deal, in his way it was very probable that he met O'Connor by appointment, as the latter had walked out of the town of Whitſtable on the Monday already mentioned; and they both came to Margate about an hour after the other three priſoners had arrived there. Now, from all theſe circumſtances, and from the ſeveral papers found in their poſſeſſion, and which were to be given in evidence, it muſt appear moſt clearly that the priſoners had been engaged in one common tranſaction. Now, with reſpect to their denying luggage, which he ſhould prove they had had in their care, he could not form any conception how perſons ſhould feel a deſire to ſhake off all knowledge of property that had been in their poſſeſſion, unleſs they had been apprehenſive that the owning of it would bring home guilt to them. Nor could he conceive how it was poſſible to ſhew that they had not an intention to go to France. With reſpect to Mr. O'Connor, there was one circumſtance to which he ſhould beg leave to call the moſt ſerious attention of the

Jury. This was a letter that had been found in his poſſeſſion at the time he was taken. The letter was to the following effect:

"My dear friend, I have had a letter ready to ſend you theſe ten days, and could get no opportunity of conveying it. You cannot think how that circumſtance has vexed me. Maxwell is anxious to go away from his creditors, and I had no way of getting him off, for this embargo prevents him. It is ſaid that Lord Fitzwilliam intends going over to Ireland; and great hopes are entertained of ſeparating the Catholics from the Union. This would be a thing much to be lamented, and which you and every good man muſt endeavour to prevent. But the people are too honeſt, and are not to be miſled any more by couriers. I have received your letter by the young man; and I will do all I can for him. I will make it a point with Maxwell that he ſhall go by the way of Hamburgh. The *man of conſideration* told me he had heard that government had intercepted a letter from France to Ireland, which promiſed aſſiſtance to the latter country. The government here are put to great ſtraits.—The taxes are very low. The *Black Terrier*, and *his little brother*, are ſorry curs. The *Little Prieſt* has loſt all credit.—Chevalier was the perſon who wrote to me; and he ſaid he would have nothing to do with Nicholſon, or any of his ſet, as they were fallen into contempt. I wiſh to have an edition of my pamphlet printed in Ireland; the price ſhall be 3*s*. 6*d*. and no copy muſt be ſold to any except perſons who are known. I muſt go to Williams, as ſoon as I can, when I muſt be very active—when I am at *this place* you ſhall hear more from me."

The attorney-general, after reading the above letter, ſaid, he ſhould be able to ſhew what was meant by certain words in it, from another paper found in Mr. O'Connor's poſſeſſion, and which was a kind of key to theſe words—the words being placed in one column, and an explanatory word immediately oppoſite to each, in a correſponding column. The correſponding word to *Williams*, for inſtance, was *France*; *This place*, ſignified *Paris*, &c. This letter was directed to Lord Edward Fitzgerald; and from every circumſtance attending it, it was impoſſible that Mr. O'Connor could ſay he had not been privy to the deſign of going to France, eſpecially when

when it ſhould be proved that he had held the ſort of connection he did hold. It would alſo appear that he had a connection with Quigley, and carried on a correſpondence with him.

The jury would find that, among the quantity of goods found in the poſſeſſion of the priſoners, there was money to the amount of about 900*l.* or 1000*l.* Then he would aſk, whether this property was of ſuch little value that it was not worth owning by any, but abandoned by all the priſoners? The box which contained the money would prove the connection that exiſted between Quigley and O'Connor, from the circumſtance of a part of the money being the property of the former. For at the time that box was opened, there was found in it a parcel or a rouleau, containing 75 guineas, and having written upon it by way of memorandum, "this is captain Jones's money." He would next ſtate to the jury other circumſtances to ſhew the connexion which Quigley had with the priſoners and others. The priſoner, Binns, had left his box at the houſe of Evans, in Plough-court, from which it had been removed by ſome friend of his. It was traced, however, to the place to which it had been conveyed; and in it were found no leſs than the very clothes in which Quigley had in the year 1797 travelled through France: and in the pockets were found ſeveral papers, containing the names of the places where he ſtopped, &c. there were two other papers in his hand-writing, which would ſhew that this perſon had a connexion with the people of Mancheſter in the month of February laſt. One of theſe letters informed his friend there, that notwithſtanding the ſevere prohibition of the French, he was determined to carry on his buſineſs at all events. It then ſpoke of ſending troops to France. It was ſigned William Cloakſon. The other letter was directed to a perſon at Amſterdam, and ſigned William Morris. The writer ſtated, that he wiſhed to be informed upon the ſame ſubjects relating to merchandize, as he was obliged to attend his duty as a military man. His partner, he ſaid, had a quantity of goods ready to be ſhipped off—perhaps they would ſhip a double quantity. They were very uneaſy about the ſafety of the laſt parcel that was ſent over, &c.—Another part of the evidence that was to be laid before the jury, would be that of the priſoners having

having been armed with a perſon at Margate to carry their luggage from thence to Deal. And he would venture to affirm, that there was not a witneſs to be brought forward who would not afford the moſt important evidence, to prove the truth of all the facts he had ſtated. —After having given this general outline of theſe facts, he felt it his duty, in the next place, to ſay a word or two upon the law relating to this queſtion. What he had to ſtate was this, that when ſeveral priſoners were acting in a conſpiracy together, the act of any one of them was the act of the whole; and if any one act ſhould make out this conſpiracy, and it appeared that they all knew of it, though the act of only one perſon, it was then the duty of the jury to find them all guilty. But it was poſſible that there might be one or more out of ſeveral perſons, againſt whom the guilt of others could not be brought home: in that caſe, ſuch perſons ſhould be acquitted. In the courſe of the evidence there might be given ſome explanation of the contents of each paper. This, then, was the whole of the caſe which he had to ſtate, and he would leave it to the jury to make a true deliverance, convinced, as he was, that they felt the great duty which they owed to the priſoners and to the country, and that they would diſcharge that duty ſatisfactorily.

John Revett apprehended the priſoners at Margate, on the 28th of February. In the parlour he found Leary and Allen, and Binns at the bottom of the ſtairs. He went up, and found Quigley with the tea things before him, and ſecured him. In his left hand pocket found a dagger. At this time Mr. O'Connor came into the room, whom he ſearched, and found in his purſe a bit of paper, containing a name written with a pencil. He found in the great coat pocket a pocket-book, and a paper in it, which he took down to the parlour, where the luggage was: he aſked the priſoners who the pocket-book belonged to; they refuſed to own it, and went up ſtairs, and found a ſmall trunk; aſked O'Connor if he would own it? He ſaid not. Revett found a great coat (pointing to it.) He aſked the priſoners if they knew whoſe it was? They ſaid not. In the pocket-book there were ſome other papers, which *he marked.* (Here the papers were produced, and the witneſs ſwore to them.) He brought

brought the priſoners after this to Bow-ſtreet, where they were examined.

Croſs examined by Mr. Plomer.—At Margate, *he did not take any account of the papers, nor did he, nor any body elſe, mark them*, nor take them before a magiſtrate, till he came to Bow-ſtreet. When he went up ſtairs he left O'Connor with two ſoldiers.—he aſked if the great coat belonged to the priſoners? When he examined it, the priſoners were in the room; *nobody* was in the room when he took the great coat, it was lying there. This houſe was a public inn, and a great many people were in it. No papers were examined in the preſence of the priſoners. The witneſs and others went into a room and examined the pocket-book, in the middle of which the paper was, but not in one of the pockets of this pocket-book. He did not recollect whether any of the papers were miſſing at Bow-ſtreet; they all remained in the witneſs's poſſeſſion from the time they were found till produced at Bow-ſtreet. The priſoners had deſired at Margate that all the luggage might be ſealed; but it was not done.

Fugion's evidence was very ſimilar to that given by Rivett. The identity of the papers could not be ſworn to, any more than the property of the great coat.

A Mr. *Twopenny* ſaid, the priſoners denied all knowledge of the great coat.

Ann Cricket examined by the Attorney-General.—I keep the King's-Head at Margate: baggage came in a cart, three gentlemen were along with it: two perſons came afterwards. I can ſwear that the priſoners were thoſe perſons. Mr. Quigley, who firſt came to my houſe, gave me a parcel. When the other two gentlemen came, they made an enquiry after him. I carried the meſſage to him by the name of Capt. Jones, and he ſaid he would wait on them. The three gentlemen ſpent the evening together, and ſlept at my houſe that night, and there were no other ſtrangers in the houſe at the time. There was no other great coat in the houſe, the property of any body.

Jane Dexter, ſervant to the former witneſs, examined by the ſolicitor-general. She ſaw the priſoner Quigley come to the houſe in Margate, in company with three gentlemen, who ſlept there.—She ſaw Quigley in the dining-room, when ſhe went to prepare breakfaſt, and heard

heard him ſay, he wanted to take a lodging in Margate. She knew nothing of any great coat.

William Kirby, ſtable-keeper, at Margate.—An application was made to me on the 27th. I ſaw Leary and Allen at the King's Head. They wanted to take a cart to carry ſome luggage to Deal. I told them I would take them the following morning. Leary went to aſk him, when he called his maſter, and returned with an anſwer, that they would be ready to go away at twelve o'clock next day; but before that time arrived, they were in cuſtody.

Frederick Dutten, an Iriſhman, and a quarter-maſter in the army, ſworn.—I know Quigley; I have ſeen his hand-writing, the manner of which I have a knowledge of—The paper relating to merchandize and quarter, read by the attorney-general, was then produced, and ſworn to be his hand-writing.

Croſs-examined by Mr. Plomer.—He ſaid he had been a ſervant; is now a quarter-maſter. Being aſked if he had been a livery ſervant, he ſaid not; but acknowledged he had worn a livery once. He had been in ſeveral ſervices. He was diſmiſſed the ſervice of Mr. Carliſle, in conſequence of ſome *lies* told of him. He was afterwards a publican, without a licence, but never was diſcharged from any place in conſequence of miſconduct. He had given evidence ſometimes before in courts of juſtice. He never applied to government for his ſervices; but he hopes he and his family *would be provided for*. Mr. Plomer then ſhewed him a letter, which he ſaid he believed to be his hand-writing.—It was an application to Lord Carhampton for the quarter-maſter's warrant. He was examined once as a witneſs againſt one Lowry.—He there acknowledged he had ſwore ſecrecy; and afterwards divulged it; but excuſed himſelf by ſaying he had ſworn the firſt oath on *A Reading made Eaſy*. The witneſs has been a quarter-maſter ſince laſt winter.

Kean Mahoney, a ſhop-keeper at Canterbury, ſaw Binn on Friday, the 23d of February, at Canterbury. He tol the witneſs that there were ſome friends of his on th other ſide very much diſtreſſed; that he wanted to eſta bliſh ſomething in the ſmuggling line, and wiſhed to kno any perſon at Whitſtable who uſed to let boats. Th witneſs did not ſend him to a man there. He ſaid h friend

friends in London wanted to go to Flushing or Ostend. When he came back, he said he could not succeed, because the boatmen were so exorbitant in their demands. Binns went to London, and returned by way of one of the Gravesend boats. He said his reason for coming back so soon was, that his friends had left London in a Whitstable hoy. He then went to another house—the Rose. The witness went to the post-office to enquire for letters for him, in the name of Williams, where he got two, and delivered them to him; but could not swear to the letters, as he had not read the superscription. Binns then told the witness, that as he was a countryman he would tell him his name was Binns, but from having been prosecuted before that, he did not wish the furious people of Canterbury should know his name.

Mr. *Parkins*, a publican at Whitstable.—Quigley and O'Connor slept in my house; I learned that one was colonel Morris, and the other captain Jones. Quigley asked me if I could accommodate him with a boat to Margate? I enquired of Edward Ward, who asked a guinea and a half for the boat. He asked me if there was any danger of his baggage being searched? He went away, however, without any baggage, and took a cart, in which he carried baggage, and said it was a disagreeable business to have one's goods tossed about in such a manner; being asked if he was going to Dover, and if he had any correspondence across the water? he said he had some at Amsterdam. I carried a letter for him directed to his friends at that place. He told Quigley, that his goods would be searched, for no goods ever went on the quay of Margate, without being searched.

John Dyason, nephew to Parkins's servant; he slept in the next room to where O'Connor and Quigley slept. In the morning he heard a passing and repassing, and heard money counted. He heard a pen going as if they were writing, and heard some one say it was wrong, but could not tell who. Could hear the writing going on without listening. There is a partition of wainscot between both, and a lattice at the top.

Mr. *Parkins* being called, said, that the partition was lath and plaster, and run up to the top of the cieling.

Mr. *King*, the under secretary of state, was present when a small mahogany trunk was broke open at the duke

of Portland's office. He ſealed it up, it contained guineas, louis d'ors, &c. amounting to 1000*l.* In a canvas bag found in the box, there was a paper marked by the witneſs's initials; this paper was tied to the money, it ſtood for captain Jones, and deſcribed the quantity of money contained in it (75 guineas). The witneſs found nothing elſe but the rouleaus. The rouleaus were not all alike. There were in the box four ivory cylinders taken out of a dreſſing-box, with a black leather cover with guineas in them. He found a ſcrap of paper, which was taken out of the dreſſing-box. It was a direction to write by William Williams from Canterbury. The witneſs received the box from Mr. Ford, and in the joint poſſeſſion of him and Mr. F. it remained ever ſince.

Mr. *Ford* was preſent when a ſmall money box was broke open. He had received it from Fugion and Revett at Bow-ſtreet. He ſaw a dreſſing-box with a black leather caſe broke open. They were not opened at Bow-ſtreet, and the ſecretary of ſtate ordered them to be brought to his office, where they were broke open. Binns immediately acknowledged his name, as did O'Connor.

Mr. *Fugion* ſwore to the ſmall heavy box being in his poſſeſſion from the time he took it at Margate till he came to London. A ſmith was fetched to open the ſmall box.

Revett aſſiſted in carrying the ſmall cheſt and dreſſing-box to London; and they were not opened till they came to the ſecretary of ſtate's office.

Thomas Hockleſs, a part owner of the Whitſtable hoy, ſaw Quigley before. He went to receive the freight from him. He paid the witneſs one guinea in the name of colonel Morris, for parcels and paſſengers.

Henry Thomſett, of Offham, in the county of Kent, labourer, was at the Bear and Key, at Whitſtable, on the 26th of February. He was in the tap-room where the ſervants were. The man in his hearing demanded a guinea and a half for the carriage of the goods; the witneſs ſaid he would take them for a guinea, and agreed to it. Colonel Morris was not there at the time. But he (the witneſs) ſettled with captain Jones to go to Margate. Captain Jones walked along with him, and told the witneſs if he met colonel Morris he ſhould ſoon return to London, as colonel Morris was going to the Weſt-Indies.

Captain

Captain Jones aſked the witneſs his buſineſs, and he told him what it was, and that the people of Whitſtable were all in a bauble about theſe people, and did not know what to think of them. Captain Jones ſaid, in converſation to him, that he had been at ſea, and had been commander of the Morgan Ratler in the laſt war. When they got to the inn at Margate he took out a coat, and gave it to his ſervant, Allen; it was ſomething like the coat in court, but he could not ſay it was it. The witneſs ſeeing O'Connor after this, ſaid to Allen the ſervant, is that colonel Morris? The other replied—"By Jeſus I don't know;" and afterwards ſaid—"By Jeſus it is." Captain Jones gave him the guinea for the carriage of the goods.

Croſs-examined—He had no converſation of conſequence with his ſiſter as to the evidence he ſhould give on this trial. He ſaid, he did not declare to his ſiſter, that he would hang the priſoners, nor take away their lives if they had an hundred. Nor did he tell his ſiſter, nor any body elſe, that he was to get money for his evidence. He ſaid, he had declared he would not take 100*l.* from Mr. O'Connor; he would not take it for bribery. He knew no ſuch woman as Mary Morgan. A brother of his, from Newgate, came and offered him 300*l.* for going away, and not giving evidence againſt the priſoners; but he only heard his brother ſay that the priſoners wiſhed him to go away.

Nicholas Cloak, who keeps the Sun inn at Canterbury, remembers Binns coming to his houſe on Sunday, the 25th. The witneſs never ſaw him after that till he was in cuſtody in Canterbury, when he went to ſee him; and he told the witneſs that he knew nothing of him, and deſired him with a deal of haughtineſs to get out of the room.

Mr. *Bardell*, an officer of the cuſtoms at Margate, was on watch at Margate on the night of the 27th, and in the morning went to Mrs. Cricket's to aſſiſt in ſeizing the priſoners, and the baggage, but heard no converſation between them.

Oliver Carlton, Eſq. high conſtable of Dublin, found certain papers in Leinſter-houſe, Dublin; the apartments of Lord Edward Fitzgerald.

Mr. *Abbott* lives in Cork, in Ireland; ſaw Mr. O'Con-

nor write, and believed the letters ſhewed him to be his hand-writing.—Thoſe were the ſame which Mr. Lane ſpoke to, and were mentioned in the attorney-general's ſpeech; one letter alluding to Maxwell, who was to go to Hamburgh—the *black terrier*, the *little prieſt* &c. The paper that was proved to be in the razor caſe was next read: in it the different names were explained:—Williams was *France*; Bantry, *Cheſapeak*; Dublin Bay, *Honduras Bay*; 1000 men, 1000*l.*; a ſhip of the line, a *hogshead*; a cannon, a *jar*; military ſtores, *merchandize*; horſes, *books*; Paris, *this place*; L. O. *Lord Fitz.* &c. &c. Another was read, addreſſed to Roger O'Connor, from Arthur O'Connor, ſtating, that he had ſold all his property to Bundet, and the rents were to be tranſmitted to Hugh Bell, and Sweeney was to collect the rents: it ſtated that the *Courier* only was to be ſent to Ireland, the morning papers being mere lumber, and it was uſeleſs to have any other for *The Preſs*. That nothing was worſe than the ſtate of the finances in England, and that Scotland was all Iriſh; and the people of England wiſhed for a change, but would not ſtrike.

Frederick Dutton ſwore to the letter being the hand-writing of Quigley. The letter was directed to citizen Edward Fitzgerald, commonly called Lord Edward Fitzgerald. Being aſked how many informations he had laid, and if he had laid 50?—The witneſs ſaid, he could not tell; and threw himſelf on the protection of the court!

Mr. Juſtice *Buller*.—"I cannot ſee what he means by throwing himſelf on the protection of the court."

Mr. *Gurney*.—"He has good reaſon for doing ſo; and obſerved, that he meant to impeach his evidence by ſhewing him to be a common informer."

TUESDAY, *May* 22.—*Second Day*.

The court aſſembled at eight o'clock this morning, when Mr. *Plomer* entered upon the defence of O'Connor and Quigley. Mr. *Gurney* was then heard in favour of Binns; Mr. *Ferguſſon*, on the part of Allen; and Mr. *Scott*, in behalf of Leary.

The court then proceeded to hear the evidence for the priſoners as follows:

Jeremiah Haſſet, keeper of the round tower in the caſtle of Dublin, remembers Mr. O'Connor being kept in

in close confinement there. He was suffered to see two friends, and no other. He recollected two shots being fired at the part where he was confined, in the month of June last. From that time Mr. O'Connor did not go to the window to look out.

Mr. *Stuart* being shewn the letter which Mr. Love had swore was Mr. O'Connor's hand-writing, and asked if he supposed it was; he did not think it was, but was not quite certain. Witness had been a magistrate in Ireland. He knew Mr. Quigley, who lived in Dundalk, in the county of Louth, in Ireland. As far as he knew Mr. Quigley personally, he was a good moral character.

Cross-examined.—He said, Mr. Quigley called on him in London, said he was in distress, and asked him for money, which he gave him; and that was the only connexion which he had with him lately. The witness knew Mr. O'Connor. He had been on an intimate footing with Mr. Quigley. The witness sent the letter to Quigley in Plough-court; he knew Mr. Quigley was a priest; but he told him he went by the name of captain, and witness addressed him in that way. The last place the witness saw him in Ireland was in the county of Down, about a year ago. He did not know that Quigley had ever been on the continent.

The earl of *Moira* sworn.—His lordship had a little knowledge of Mr. O'Connor; he once conversed with him on political subjects; and being asked if he knew what his political sentiments were?

The solicitor-general objected to the question, as it only related to one conversation.

Lord Moira did not feel himself competent to speak to Mr. O'Connor's general character; for he had but one particular conversation with him, which as his lordship was going to relate,

The court would not allow this evidence to be given, and Lord Moira retired.

Cornelius Kettle knew Henry Thompset. He had heard him say he conveyed the prisoners from Whitstable to Margate; that they paid him handsomely. As he was coming back he met a man who was in pursuit of the prisoners. He said it would be a good job, and he would not take 100*l.* for it.

Cross-examined.—He is a clock and watch-maker. This conversation

converſation with Thompſet was about a week after the buſineſs happened, at a public houſe. He ſaid there was a reward affixed for taking them. Thompſet ſaid he had been to London, and there was rare living there: good wine was a good thing in a man's belly. There was a great coat, which he ſuppoſed belonged to ſome of them. He ſaid it contained matters of very great importance, ſuch as a printed letter, being an addreſs to the French Directory. He was aſked if he knew any thing of the coat, and he ſaid not, nor could he ſwear to it.

The witneſs was applied to on Saturday laſt by a Mr. Bonney, to come and give evidence. He did not recollect his mentioning the converſation to any body ſince. No perſon heard the converſation, as they did not ſpeak loud.—Thompſet ſaid, he was allowed ſomething, that he had been before Pitt, Dundas, and White; told them he was a ſmuggler, and that they ſettled on him ſix guineas a month till the trials were over. Three witneſſes told him "poor man, they will nurſe you."

Mrs. *Sarah Job*, ſiſter to Thompſet, remembered ſeeing Thompſet at her houſe the day the priſoners were arraigned. The witneſs had ſent for him to ſpeak to him about his children; and then ſhe aſked him what he meant to do with the priſoners?—ſays he, "Hang them to be ſure."—"I hope not," ſaid the witneſs. He then ſaid, "if they had an hundred lives, I would take them all."

Croſs-examined.—And ſaid ſhe had ſent for Thompſet to aſk about the priſoners, becauſe her brother's children, hearing they were to be hanged, were afraid they ſhould ſee their ghoſts. She knew a Mr. Beck, of Canterbury, and Mrs. Beck; but did not know whether ſhe was related to any of the priſoners. The witneſs was not ſubpœned till laſt Sunday.

Mary Morgan ſervant to Mrs. Job. She heard ſome words paſſing between her miſtreſs and Thompſet on the 9th of March, her miſtreſs aſked what he had to ſay concerning the priſoners? he ſaid he would hang them; after this the witneſs left the room.

The Hon. Thomas Erſkine had known Mr. O'Connor theſe three years, as well as a number of his friends, who were perſons of high rank, with whom he (Mr. Erſkine) acted in parliament, and ſpent much of his time. Mr. O'Connor had been with theſe perſons, and viſited them

on

on the moſt friendly footing for theſe three years paſt.—Being aſked as to Mr. O'Connor's character, he ſaid he had the beſt character that any man could poſſeſs. He was a man of the ſtricteſt honour and integrity, and one who had made great ſacrifices to what he thought was right. If there appeared any prominent feature more than any other in his character, it is a noble-mindedneſs, and a high ſpirit of honour; and he thought himſelf bound to declare, that he had ever conſidered him incapable of acting with treachery to any man, and eſpecially to any man he had a regard for.

Mr. Erſkine knew him to have been in the conſtant practice of profeſſing not only a regard, but admiration and enthuſiaſm, for the perſons whom he aſſociated with. "I never found him (ſaid Mr. E.) ſo help me God, to alter that regard; I never knew him have any other connection; nor did I know of his profeſſing political principles different from me—I never had any reaſon to think that his principles differed from my own as well on public as on private ſubjects." He ſaw Mr. O'Connor in January laſt in his own houſe, he adviſed him to leave this kingdom any how. It was a ſhort time before Hilary Term when he did ſo; he was poſitively certain of it.

The Hon. *Charles James Fox*.—I have known Mr. O'Connor very well theſe three or four years, and had occaſion to ſee him frequently, and converſed with him frequently upon political ſubjects. He lived chiefly with my friends who are called the oppoſition, and he alſo lived in eſteem and confidence with me, and I believe with others. I always conſidered him as a perſon well affected to his country. I conſidered him as a man highly enlightened, and firmly attached to the principles which ſeated the preſent family on the throne, and to which principles we owe all our liberty. I am acquainted with Lord Edward Fitzgerald, who is a near relation of mine. I believe Lord Edward Fitzgerald was anxious to go to France relative to ſome private affairs concerning his wife, who had property there. Knowing the political ſtate of that country, and that a law againſt going there exiſted in this country, I adviſed him not to enter the French territory on any account, if he went on the continent.—I can deſcribe Mr. O'Connor to be one of the openeſt characters I ever knew; he was perfectly open in his friendſhip.

friendſhip. Mr. O'Connor almoſt always converſed on Iriſh politics.

The *Earl of Suffolk*, after ſpeaking of Mr. O'Connor in the higheſt terms, concluded with ſaying; about two years ago I had a converſation with him, and ſaw ſo much of him, that I told Lady Suffolk I had met with one of the moſt extraordinary young men I ever ſaw. I ſo much admired his political character, that two years ago I introduced him to the duke of Norfolk, the biſhop of Llandaff, and ſerjeant Adair.

Mr. *Sheridan*.—I have known Mr. O'Connor theſe three years paſt, and have frequently ſeen him ſince. I never met him in any company but that of the reſpectable gentlemen of oppoſition, with whom I aſſociated; and, from the opinion I had of his principles, I always converſed with him on political ſubjects without any reſerve. His character was remarkable for its openneſs: he converſed on the politics relating to both England and Ireland with great frankneſs;—but he often ſpoke about Ireland. He concerned himſelf ſo much about the grievances of that country, that he wondered how the people of England could complain of any.

Croſs-examined.—He ſaid he never knew of Mr. O'Connor having been acquainted with a man of the name of captain Jones, nor was any ſuch perſon ever introduced to him by Mr. O'Connor; but Mr. O'Connor ſaid, that if he ſhould be obliged to leave the kingdom, he muſt form ſome connections for the purpoſe of getting away which he would not wiſh to form. He believed he might have met the priſoner Binns at ſome public meeting, but had no acquaintance with him. He never knew Mr. O'Connor under a fictitious name. He never met any man in his life who ſo much reprobated the idea of any party in this country deſiring French aſſiſtance.

His Grace the Duke of Norfolk, Mr. M. A. Taylor, Mr. Gratton of Ireland, Lord John Ruſſel, Lord Thanet, Lord Oxford, Mr. Whitbread, and ſeveral other perſons of rank and reſpectability ſpoke to the ſame purport.

Mr. Dallas proceeded to comment on the evidence on the part of the priſoners, and the attorney-general to reply.

The priſoners were then ſeverally called upon to ſtate what they had to ſay in their defence.

Mr. *Coigley*.

Mr. *Coigley*.—"Gentlemen of the jury, it is impoſſible for me to prove a negative; but it is a duty I owe to you, and to myſelf, ſolemnly to declare, that I never was the bearer of any meſſage or paper of this kind to France, in the courſe of my life. That paper is not mine; it never belonged to me. It ſtates that it was to be carried by the bearer of the laſt: this is ſomething which might have been proved, but it is impoſſible for me to prove the negative. There is alſo in this paper an alluſion to ſecret committees and political ſocieties. I declare that I never attended any political ſociety whatever. With theſe conſiderations, I conſign my life to your juſtice: not doubting but that you will conduct yourſelves as Engliſh jurymen ever do, and that your verdict will be ſuch as ſhall receive the approbation of your own conſcience, your country, and your God."

Mr. *Binns*.—"When I reflect upon the manner in which the evidence has been commented on by my counſel, I ſhould think it would be inſulting your underſtanding and diſcrimination, were I to trouble you with any obſervations of mine. Conſcious of my innocence I leave my caſe entirely with you."

Mr. *O'Connor*.—I have been ſo ably and ſo eloquently defended by my counſel, that I am not deſirous of adding a word to what they have ſaid. I reſt my caſe with the jury, as they have ſtated it."

Mr. *Allen*.—"I do not think myſelf called upon to addreſs the jury. I have not ſeen any thing in the evidence tending to criminate me."

Court.—Has the other priſoner any thing to ſay to the jury?"

Leary.—"My Lord, they may do what they like with me."

At half paſt one the jury, after a very able and impartial charge from Mr. Juſtice Buller, having retired about half an hour, returned a Verdict of

GUILTY—againſt *O'Coigley*,

NOT GUILTY—againſt all the other priſoners.

As ſoon as Mr. Juſtice Buller had pronounced ſentence of death againſt Coigley, a very uncommon ſcene took place in the court—Two Bow-ſtreet officers, who had been ſtationed there for the purpoſe, attempted to ſeize Mr. O'Connor while yet at the bar: this was prevented

by the court; but, ſome minutes afterwards, they attempted it again. This induced Mr. O'Connor to get into the body of the court; on which an immenſe number of peace officers ruſhed in, and the court was thrown into the utmoſt confuſion. Two ſwords, which were lying on the table (part of the priſoner's baggage) were drawn by ſome perſons, and ſeveral people were ſtruck with them. One gentleman was knocked down without any cauſe, and the tumult ſeemed to forbode dangerous conſequences. By this time Mr. O'Connor was ſeized, and dragged back again to the bar, when, ſilence being reſtored. he applied to the court for protection, and to know what right he had to be ſeized, being now cleared from all charge by the jury's verdict.

A warrant was then produced by the Bow-ſtreet officers, ſigned by the duke of Portland, and dated as far back as the 22d of March, to arreſt Arthur O'Connor, Eſq. on a charge of High Treaſon.

His counſel ſubmitted to the court, that he had been tried and fairly acquitted on that charge; and moved that he might be liberated.

The court ſaid, they had no power to do that, their authority having ended with their commiſſion. They hinted that an affidavit might by filed in the King's Bench, which would force the counſel on the part of the crown to ſhew why he ſhould not be liberated.

Mr. O'Connor.—"May I be permitted to ſpeak a few words?"

Mr. Juſtice Buller.—"What have you got to ſay, Mr. O'Connor?"

Mr. O'Connor.—"Will the officers take their hands off? —— ———. If I am again to be confined, may I not beg the indulgence of being ſent to the ſame place as my brother?—I have ſeen ſwords drawn upon me, after my acquittal, in this court.—I am not afraid of death.—If I am to die, let me die here. Life is not worth preſerving on the terms I now hold it.—For if I muſt waſte it out in loathſome dungeons, another confinement will ſoon be fatal to me."

Having finiſhed his ſpeech, he then was remanded back into cuſtody of the gaoler.—So that the only benefit of his acquittal was to reſtore him to that dungeon in which he had already been immured two months.

All the priſoners were ſent back to jail.

TRIAL

TRIAL FOR HIGH TREASON.

DUBLIN, JULY 20.

WILLIAM MICHAEL BYRNE having been put to the bar, a jury was ſworn, compoſed of the following perſons, viz.

Joſeph Ashley,	William Long,
William Pike,	George Walker,
Charles Bingham,	Joſhua Manders,
George Darley, jun.	Benjamin Simpſon,
Mount. Hay,	William Wainwright,
John Crossthwaite,	Frederick Parker.

The indictment was then read, which ſet forth at large ſeveral overt-acts of high-treaſon, under two counts—one, the compaſſing and imagining the king's death—the other, an adherence to the king's enemies. The overt-acts were principally for conſpiring with others to levy war and raiſe rebellion within this realm—providing quantities of men, arms, and ammunition for that purpoſe; for receiving returns of the ſame in writing; for being of a ſociety of United Iriſhmen, and for meeting, together with other falſe traitors, at the houſe of Oliver Bond, of Bridge-Street, on the day mentioned in the indictment, for the purpoſe of receiving returns of men, arms, ammunition, &c. againſt the duty of his allegiance, and the proviſions of the ſtatute in that caſe made and provided.

The caſe was opened by Mr. Webber, and ably ſtated by the prime ſerjeant.

Mr. Juſtice *B. Swan* ſworn, and examined by Mr. Attorney-General—depoſed having arreſted the priſoner, together with ſeveral others, thirteen in all, on the 13th of March laſt, at the houſe of Oliver Bond, Bridge-Street; that he was admitted by the paſs-word, "Where is M'Cann? Is Ivers from Carlow come?" Upon entering the room where the priſoners were, they appeared to be ſcattered in groupes, one man excepted, who was at a table, with paper, pen, and ink, before him, but that while the witneſs was eagerly getting poſſeſſion of the paper, that perſon alſo ſlipped into the crowd; this paper was juſt beginning to be written upon. On the priſoner

priſoner he found a letter written to him by M'Cann, having relation to a connexion with the late Lord E. Fitzgerald, and beginning in the *fraternal* ſtile, with the word *brother*; ſeveral other papers were found in the room alſo, and one particularly on the perſon of one Lynch, which was in the hand-writing of the priſoner, and imported to be an addreſs from the county of Wicklow committee to their conſtituents.

At the foot of the addreſs was a memorandum or return of men in ſeveral baronies, amounting in the groſs to 12,800 men, and having annexed to each barony ſums received for account of priſoners. The money amounted to 162l. 3s. 4. out of which 73l. 4s. 6d. was paid on account of priſoners, and the balance was the fund remaining in the hands of the county treaſurer. It alſo contained a return of divers arms, &c.

Counſellor *Williams*, to whom the priſoner was tenant, proved the addreſs above-mentioned to be the hand-writing of the priſoner.

Arthur Guinneſs, Eſq. proved the letter from M'Cann to the priſoner to have been the hand-writing of the former, he having been clerk for a conſiderable time to the witneſs.

Thomas Reynolds depoſed having been an United Iriſhman, and explained the progreſſive conventional ſtages from an original meeting of that ſociety, through baronial and county, to provincial meetings. He explained alſo their purpoſes to be the depoſition of the ſovereign, and overthrow of the conſtitution, and an aiding of the French when they ſhould land in this kingdom—he depoſed a knowledge of M'Cann, and participation in his traiterous views, and that with two others he was delegated from the county of Kildare, to attend a provincial meeting to be held on the 19th of February laſt, at the houſe of Oliver Bond, Bridge-Street; the witneſs accounted why he did not go that day—was to have attended another on the 12th of March laſt, at ſame place. That witneſs communicated his knowledge of theſe circumſtances to Mr. William Cope, and by his advice to government, in conſequence of which all the perſons at that meeting were arreſted.

Reynolds was croſs-examined by counſellor Buſhe, as counſel for the priſoner. Depoſed that he took the *oath*

of

of allegiance, and afterwards the United Iriſhman's oath; part of the oath of the latter was to keep ſecreſy, and not give oath againſt a brother; acknowledged that ſince he gave information to government he took another oath to his captains in the county of Kildare; could not recollect another oath taken in Naas; did not take an oath ſince he gave information to government, declaring he did not betray the meeting at Bond's; recollects *aſſuring* Mr. Flood, of Naas, and ſeveral other perſons, that he did not diſcover the meeting at Bond's; cannot *at preſent* recollect taking an oath to that effect; ſaid he might take ſuch an oath, and would take ſuch an oath, as he was afraid of being murdered, if the diſcoveries he made were known. A teſt was taken by the United Iriſhmen to be true to each other, and keep ſecrets; to perſevere in effecting reform and emancipation; did not think any harm in this; that numbers were led into United Iriſh Societies by theſe oſtenſible objects being held forward. Being aſked when he laſt made an united Iriſhman? ſaid he could not recollect exactly; ſwears he did not, ſince he gave government information, adminiſter an oath for ſuch purpoſe; has already received 500 guineas from government, did not expect any thing further; but could not poſitively ſwear he would *refuſe* what might be offered hereafter.

[Here he acknowledged the ſeveral charges of *theft*, &c. made againſt him on a former trial, together with the circumſtances of the *phyſic* given his mother, Mrs. Cahill's bond and note, &c.]

Thomas Miller depoſed having been an United Iriſhman, and being at baronial and county meetings with the priſoner, whoſe perſon he identified—that priſoner on ſending for him one day, told witneſs that he, the priſoner, was the perſon appointed to regulate the half barony of Rathdown, and aſked the witneſs if he could make a return of 120 men in his pariſh for the United army—inſtructing him at the ſame time in the form of making ſuch return—he, the witneſs was to have been a a captain—was in company with the priſoner in a houſe in the Glen of the Downs when he was elected to go to the county committee, which was to have been held at Anna Curry, and where he ſaw the priſoner alſo—ſaw him likewiſe at the next meeting appointed, and

which was held in Francis-Street, and that here was debated whether or not they ſhould wait for French aſſiſtance, before breaking out into open hoſtility againſt the government—it was determined in the affirmative—ſaw the priſoner again at a meeting in French-Street, where money was paid into the treaſurer of the meeting, ſome of which was paid by the priſoner. Witneſs had paid before this, money to the priſoner, which he received from different people for pikes. The witneſs concluded by ſaying, that he voluntary gave information to Lord Powerscourt and Lord Monck.

His croſs-examination went to prove that he had at Chriſtmas time brought into town to ſell, ſome green holly, which he had *taken without permiſſion of the owner*, &c. &c.

James Ryan depoſed having been a ſecretary to a ſociety of United Iriſhmen, and that the priſoner was at one of their meetings, when he profeſſed being head delegate for the county of Wicklow, at the provincial meeting—and that priſoner ſhewed him how to draw a qualification or certificate for perſons appointed ſerjeants—and that he ordered them to lie quiet for about three weeks, when the French would come, and they would aſſiſt them by a general riſing. He alſo ſwore to a voluntary diſcloſure to Lords Monck and Powerſcourt.

Several papers found in the room were read by the deputy clerk of the crown, all of which were of an inflammatory and treaſonable nature, and corroborative of parol evidence.

Here the crown reſted.

Mr. Curran, in a ſpeech of three hours duration, ſtated the priſoner's caſe.

Mr. *Buſhe* ſpoke very ably and ingeniouſly in addreſſing the jury on the part of the defence, and was with emulous ability replied to by Mr. *O'Grady*, on the part of the crown.

After clear and impartial charges from Mr. Juſtice Crookſhank, Mr. Baron George, and Mr. Juſtice Day, the jury retired for about five minutes, and returned with a verdict of GUILTY.

Throughout the whole of the trial the priſoner diſplayed the moſt unmoving manner, and when the verdict was brought in, he exclaimed, with a warm and animated

mated accompaniment of action, that he *gloried in the event of his trial!*—His father-in-law, Captain Hoy, who ſat near him in the ſide-bar, reproved him for this expreſſion: upon which he repeated the ſame exclamation in a ſtill more forcible manner, adding, that *through the whole of the buſineſs his heart was under the influence of virtue alone.* On being aſked in the uſual manner, if he had any thing to ſay why ſentence ſhould not be pronounced upon him, he replied, "that it was immaterial what he ſaid, ſince the verdict conſigned him to death; that he had in the morning ſtated by affidavit his want of preparation for trial, which was not attended to, which he ſcorned to ſubſcribe or ſwear to, if it had been a falſehood."

He paſſed a warm eulogium on the zeal and ability manifeſted by his learned counſel, who had not the advantage of any mature conſideration of his caſe; he requeſted, if not improper, that he might be allowed one or two days before execution of ſentence, to ſettle ſome affairs; that he had a wife and child left unprovided for: he alſo requeſted permiſſion for his friends to viſit him; and that an order might be given to the gaoler to unfetter his hands, and place the irons on any other part of his body. To this the court obſerved, that every indulgence ſuited to his ſituation ſhould be extended to him.

Mr. Juſtice Crookſhank, in a moſt ſolemn and pathetic manner, pronounced ſentence of death on the unfortunate priſoner, who liſtened to the awful determination of his fate with much fortitude.

COURT OF KING's-BENCH.

Before Lord Kenyon and a Special Jury.

THE KING *v.* HANSON.

Weſtminſter, July 6.

THIS was an indictment for a libel, on the proſecution of James Wyatt, Eſq. ſurveyor-general to his majeſty's board of works, and of John Mackell, a ſmith, in Park-lane, againſt John Hanſon, of Bruton-Street, near Bond-Street, who is likewiſe a ſmith and furniſhing ironmonger to the king.

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The profecution was conducted by Mr. Erſkine, Mr. Garrow, and Mr. Lowes; and the defence by Mr. Gibbs, Mr. Perceval, Mr. Holroyd, and Mr. Watſon.

Mr. Erſkine began his addreſs to the gentlemen of the jury, by ſtating, that the proſecutors had preferred this indictment againſt the defendant ſolely for the purpoſe of vindicating their character and reputation, which they conceived injured by the publication in queſtion.—After the learned counſel had proceeded a certain way in his opening,

Lord Kenyon aſked him what were the objectionable parts of the pamphlet on which he relied? His lordſhip ſaid, he ſaw nothing that appeared to him improper in the reading of it. It ſeemed to be a mere ſtatement of facts, upon which the defendant had grounded his opinion, in calculating the value of the work. His lordſhip at the ſame time declared, that he knew nothing of the caſe, and had never ſeen the pamphlet till it was put into his hand in court.

Mr. Erſkine here pointed out to his lordſhip that paſſage upon which he chiefly relied, namely, the two laſt lines in the book, where Mr. Hanſon declares it to be his opinion, that juſtice had been perverted by Mr. Wyatt, in his award in favour of Mr. Mackell.

His lordſhip ſaid, theſe words were certainly improper.

After Mr. Erſkine had detailed the hiſtory of the whole tranſaction between the parties, he called his witneſſes.

The firſt witneſs examined was Iſaac Ouſby, who ſaid, that he called at the Defendant's houſe for ſome locks, for the duke of Northumberland, when the defendant gave him one of the pamphlets in queſtion, and ſaid, "Read that."—Upon being aſked whether the defendant ſaid any thing elſe to him, he ſaid, No. The witneſs produced the pamphlet in court, which, he ſaid, had been in his poſſeſſion ever ſince.

The pamphlet was then put in, and read by Mr. Lowton.

Mr. Parkes was then called. He ſaid he was an iron-merchant in St. Giles's; that the defendant had ſent him a pamphlet, incloſed with a letter; that the defendant afterwards had converſation with him upon the ſubject, when he (Mr. Parkes) told him he thought it an improper publication, and that he conceived it was done to injure

Mr.

Mr. Mackell.—The witneſs farther told the defendant, that he would not be in his ſituation for 500l.

Upon Mr. Gibbs, leading counſel for the defendant, deſiring that the letter that was ſent to Mr. Parkes, with the pamphlet, might be read, Mr. Garrow objected to it in that ſtage of the cauſe.

Lord Kenyon obſerved, that a civil action ſeemed to be the proper remedy to which the parties ought in this caſe to have had recourſe, and not a criminal proſecution. In that caſe evidence might have been given on both ſides. His lordſhip at the ſame time obſerved, that he thought he perceived a diſpoſition in the learned counſel to ſettle it.

Mr. Erſkine and Mr. Garrow ſaid, they had no ſort of objection to accept of an explanation from the defendant.

Mr. Gibbs declared, his client was perfectly ready to ſay, that, in printing this pamphlet, he had no intention whatever to defame either Mr. Wyatt or Mr. Mackell; and that if any thing he had ſaid could convey an idea, that Mr. Wyatt had wilfully perverted juſtice in his award, it was quite wrong. In conſequence of this, a paper was drawn up as follows.

"I publiſhed this pamphlet only in vindication of my own veracity and character, and had no intention to defame either Mr. Mackell or Mr. Wyatt, but differing in opinion with them as to the propriety of Mr. Mackell's charges, I ſtated, in confirmation of my own opinion, the grounds upon which I had formed it; and if the publication contains any thing which can convey an opinion of Mr. Wyatt's having wilfully perverted juſtice in his award, it is exceedingly wrong, contrary to my intention, and I am very ſorry for it.

"JOHN HANSON."

This paper was read in court, and ſigned by Mr. Hanſon.

Mr. Garrow then ſaid, it was quite ſufficient, and indeed more than they expected from the defendant.

Mr. Gibbs hoped no improper uſe would be made of the paper ſigned by the defendant.

Mr. Erſkine ſaid, certainly not.

Lord Kenyon then directed the gentlemen of the jury to find a verdict of acquittal, *Not Guilty*.

TREASON.

TRIAL *of* MR. WOLFE TONE.

Dublin Barracks, Nov. 12.

A New court being ſworn, of which Genral Loftus was preſident; Colonel Vandeleur, Colonel Daly, Colonel Wolfe, Colonel ——, Major Armſtrong, and Captain Curran, members—Judge Advocate, Paterſon,

Mr. TONE was brought up, and appeared to poſſeſs a degree of coolneſs and fortitude which beſpeaks his mind to be of the firſt claſs, whatever may be his political or moral demerits.

The Judge Advocate, when the court was ſworn, informed him, "that the court had been appointed by his excellency, the lord-lieutenant, to enquire whether he was guilty of acting traitorouſly and hoſtilely againſt His Majeſty, to whom, as a natural born ſubject, he owed allegiance; they therefore deſired to known of Mr. Tone, whether he was guilty of that charge, or not?"

Mr. Tone replied, that it was not his intention to give the court any trouble; that he admitted the facts, and only deſired that he might be permitted to addreſs to the court a few words which he had written for the occaſion.

The Judge Advocate ſaid, that it was neceſſary for him to plead in form, guilty or not guilty, and deſired to know from him, whether he meant by ſaying he "admitted the facts," he meant to confeſs the truth of the charge.

Mr. Tone replied, that certainly that was his meaning; and that he meant by admitting thoſe facts, to ſave the court the trouble of examining witneſſes to prove them.

Colonel Daly, by way of caution to the priſoner, obſerved, that by admitting the facts, he would admit that he had acted *traitorouſly* againſt his majeſty. Did he mean to confeſs that?

Mr. Tone.—"Stripping the charge of its technicality, I ſuppoſe the word *traitorouſly* imports, that I was found in arms againſt the king's force in this country, in which I was born; this fact I admit in its fulleſt ſenſe; and beg only that I may be ſuffered to addreſs to the court ſome obſervations on the reaſons and motives of my conduct."

The

The Judge Advocate ſaid, that whatever paper Mr. Tone might think proper to preſent to the court, ſhould be laid before his excellency along with the ſentence.

The Preſident ſaid, he might be aſſured that the court meant to allow him every reaſonable indulgence; but Mr. Tone muſt know, that it would be incumbent on the court to take care that he delivered nothing intemperate or indecent.

Mr. Tone ſaid, he had endeavoured in the few words which he had thrown together, to be as moderate as poſſible, and hoped he ſhould ſay nothing which the court could conſider as indecorous; if he ſhould, however, drop any intemperate expreſſion, he begged the court would mention it, and he would immediately correct it. Mr. Tone then proceeded, and read from a written paper in ſubſtance nearly as follows:

Mr. Preſident, and Gentlemen of the Court Martial,

" I mean not to give the court any trouble in proving that I have been taken in arms, and that I have acted hoſtilely againſt his majeſty's government in this country. I admit the fact. At an early period of my life I conceived that the connexion of Ireland with Great-Britain was the bane of Iriſh proſperity, and that while that connexion laſted, Ireland could be neither free nor happy; that opinion the experience of every ſucceeding year confirmed, and in conſequence of it, I determined to uſe every effort in my power to ſeparate the two countries: that Ireland was not of herſelf able to throw off the yoke I knew, and I therefore ſought for aid wherever it was likely to be found. In honourable poverty I rejected offers, which, to a man in my circumſtances might be conſidered highly advantageous; I remained faithful to what I thought the cauſe of my country, and found in the French Republic that ally which, I hoped, would reſcue three millions of my countrymen from ——————"

Here the court interrupted him. They conſidered this language as neither revelant to the charge, nor ſuch as ought to be delivered in a public court. One member obſerved, that it ſeemed calculated only to inflame the minds of a certain deſcription of people, many of whom might probably be preſent, and that therefore the court ought not to ſuffer it.

Mr.

Mr. Tone said, if there was any thing in this passage, which gave offence to the court, he would erase it.

The Judge Advocate said, he thought that if Mr. Tone meant this paper to be laid before his excellency in the way of extenuation, it must have a quite contrary effect, while any of the foregoing parts were suffered to remain. From the conversation he had with him yesterday, he conceived he meant to confine himself to matter of another kind.

Mr. Tone said he should urge this topic no farther, since it was disagreeable to the court; but would proceed to read the few words which remained.

General Loftus.—"If the remainder of your address, Mr. Tone, is of the same complexion with what you have already read, will you not hesitate for a moment whether you will persist in reading it, after learning the opinion of the court?"

Mr. Tone.—"I believe there is nothing in what remains for me to say, that can give offence; I mean to express my thanks to the Catholic body, in whose cause I was engaged."

Court.—"That seems to have nothing to do with the charge against you, to which only you are to speak. If you have any thing to offer in defence or extenuation of that charge, the court will hear you; but they beg that you will confine yourself to that subject."

Mr. Tone said he should confine himself to facts, relative to his connection with the French army, and his motives. He proceeded—"Unconnected with any party in the republic, without interest, without wealth, without intrigue; the openness and integrity of my views raised me to a high and confidential rank in the French army: I obtained the confidence of the executive government; the approbation of my generals; and, I hope, the esteem and affection of my brave comrades. In reflecting on this, I feel a consolation, of which no reverse of fortune, nor any sentence, which is in the power of this court, however highly respectable, to inflict, can deprive me! Into that service I originally entered with the view of saving my country; from that motive I have encountered the toils and terrors of the field of battle; I have braved the dangers of the sea, covered with the triumphant fleets of the power I opposed; I have sacrificed my views

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in life; I have courted poverty; I have left my wife unprotected, and my children fatherleſs; after doing this for what I thought a good cauſe, it is but little that I die for it! It is ſaid that the country has been diſturbed; I lament it; but I deſire it may be remembered, that for four years I have been abſent from this country, and therefore to me none of its ſufferings can be attributed. I deſigned by fair and open war to procure a ſeparation of the countries; for open war I was prepared; but if inſtead of that a ſyſtem of private aſſaſſination has taken place, I deplore it; but it is not chargeable on me. Atrocities, it ſeems, have been committed on both ſides; I do not the leſs deplore them; I deteſt them from my heart; and to thoſe who know my ſentiments and my character, I may ſafely appeal for the truth of the aſſertion. In ſuch a cauſe as this, ſucceſs is every thing; I have attempted that in which Waſhington ſucceeded, and Koſciuſko failed. After a battle bravely fought, fought with a valour which in a generous enemy would have excited reſpect and ſympathy, I have been taken, and, to the diſgrace of thoſe who gave the order, have been brought hither in irons, like a felon; what awaits me I am aware of, but I ſcorn to ſupplicate, or to complain. What I have ever written or ſpoken, or acted reſpecting this country and its connection with Great-Britain, I here avow; I have acted, written, and ſpoken on that ſubject with deliberate caution, and I am now ready to meet the conſequence. To the ſentence of the court, whatever it may be, on this confeſſion, I ſhall patiently ſubmit: they, I am ſure, will diſcharge *their* duty; I ſhall endeavour to diſcharge mine."

There was a degree of magnanimity in the manner of this unfortunate man, in delivering this addreſs, which evidently affected both the court and the auditory. Silence prevailed for ſometime, and was followed by a converſation among ſome of the members, which was interrupted by Mr. Tone, who aſked whether it was uſual, in this kind of court, for any interval to elapſe between the termination of the trial, and the awarding of judgment?

The Judge Advocate informed him, that the Court uſually made up their mind at the ſame time as to the guilt of the priſoner and the judgment they ſhould award, after which the whole was ſubmitted to the conſideration

of his excellency; if Mr. Tone, therefore, had any thing farther to ſubmit to the court, this was his time for doing it.

Mr. Tone ſaid, there was a point on which he wiſhed to offer a few words; it related to the mode of puniſhment. "In France," ſaid he, "our *emigrés*, who ſtand in nearly the ſame ſituation in which I ſuppoſe I ſtand here, are ſhot; I could wiſh therefore, if the court have any diſcretionary power with reſpect to the kind of death, they would award me the death of a ſoldier, and let me be ſhot by a file of grenadiers. I ſolicit this indulgence from the Court, rather in conſideration of the cloth I wear, as chief of brigade in the French army, than from any perſonal regard to me. In order to evince my claim to this favour, I beg that the court will take the trouble of reading my commiſſion and letter of ſervice; it will appear from them that I have not got them merely as a cloak, but that I have been now for a conſiderable time *bona fide* an officer in the French ſervice."

The Judge Advocate obſerved to the priſoner, that his reference to thoſe papers would afford concluſive proof of the charge againſt him.

Mr. Tone ſaid, he was aware of that; but he had already admitted the fact, and therefore was willing to admit the papers as evidence.

The court enquired where thoſe papers were? Major Sands ſaid they were in his poſſeſſion. He then gave them to the priſoner, who preſented to the court, firſt his brevet, as chef de brigade, from the executive directory, and ſigned by the war miniſter; next his letter of ſervice, appointing him adjutant-general; and then a paſſport.

On looking at the letter of ſervice, general Loftus obſerved, that by this he was appointed to ſerve in the army of England.

Mr. Tone replied, that he had ſerved in that army when it was commanded by Buonaparte, by Deſaix, and by general Kilmaine, who, Mr. Tone obſerved, was alſo an Iriſhman; but he had ſerved in many other expeditions.

Of the paſſport the court obſerved, that he was there called "Smith," which Mr. Tone explained, by ſaying, that he went to France from New-York to America; that he then took the firſt paſſport he could find, which happened

happened to be that of one Smith; that he was admitted into France under that name; and in consequence was known by the one name as well as the other; and that it was a usual thing for men in France to have a *nom de guerre*.

When Mr. Tone had finished, General Loftus said, that his papers and his written address (he had blotted out a great deal of it) should be laid before his excellency, as well as the request he had made respecting his sentence. But as it was not likely that he would be brought before that Court again, he desired he would recollect whether he had any thing farther to offer.

Mr. Tone said, nothing further occurred to him, except that the sooner his excellency's approbation of their sentence was obtained the better. He would consider it a favour could it be obtained in an hour.

The President then informed him he might withdraw, and the Court was cleared.

COURT OF CHANCERY.

Friday Nov. 23, 1798.

THIS Day came on to be argued before the Lord Chancellor, the important case of

THELLUSSON *v.* WOODFORD.

The bill was read, which stated at length the will of the late Mr. Thelluson, in which, after various legacies, he devises the whole of the residue of his real and personal property to trustees to the following uses, *viz.* That the property should accumulate during the lives of his three sons and his four grandsons, and the survivor of them; and at the decease of the last of them, to be divided into three lots, the first to be conveyed to the eldest male lineal descendant of Peter Isaac Thelluffon, his eldest son, and in failure of such male lineal descendant, to the eldest male lineal descendants of George and Charles Thelluffon, and the other two lots in the same manner to the eldest male lineal descendants of George and Charles, with similar cross remainders. There was a clause that such male lineal descendant should take the name of Thelluffon and in default of such male lineal descendant

deſcendant from any of his ſons, than he bequeathed the whole of his property to His Majeſty, his heirs, and ſucceſſors, being kings of England, for the benefit of the Sinking Fund. The bill concluded with praying, that the ſaid proviſions ſhould be declared null and void, as being inconſiſtent with the rules and principles of law. All the parties concerned in this will appeared by their reſpective counſel, and among the reſt Mrs. Thelluſſon, whoſe counſel ſtated, that ſhe learnt with the utmoſt ſurpriſe the diſpoſition made by her late huſband of his property: That there always had ſubſiſted the warmeſt attachment between the deceaſed and his ſons: that he frequently expreſſed his happineſs at the great filial affection of his children: that he had always manifeſted the ſtrongeſt anxiety to promote their intereſt and happineſs: that he had written to his ſon George, deſiring him not to be diſpirited reſpecting the election for the Borough, and not to be uneaſy about the expences; and that he had often expreſſed an intention of purchaſing eſtates for his ſons.

Mr. Manſfield then addreſſed the chancellor in ſupport of the bill. He ſaid, the Will upon which his Lordſhip was to determine was certainly of a moſt ſingular ſort, and he believed wholly without an example; it aimed at that which he contended the law would not permit. It was by no means neceſſary for him to ſtate the whole of the Will, as the whole queſtion turned upon one part of it:—he then proceeded to ſtate the various deviſes of the Will as above. He wiſhed to notice that there was this particularity in the deviſe—the limitation was during the life of his ſons, P. J. Thelluſſon, Geo. W. Thelluſſon, and Charles Thelluſſon, and during the lives of his grandſons, the ſons of P. J. Thelluſſon now living; and alſo of ſuch as might hereafter be born to his eldeſt ſon P. J. Thelluſſon. With reſpect to his other ſons George and Charles Thelluſſon, the limitation extended during the term of their lives, and the lives of their ſons, *who ſhould be living at the time of the Teſtator's death, and of ſuch as might be born within due time afterwards.*

It was not eaſy to underſtand what was meant by *due time*. Since his deceaſe two ſons have been born, and they were to be taken into the calculation; then the accumulation would be for nine lives inſtead of ſeven.

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The teſtator gave various legacies to his widow and children, which had no connection with this cauſe, and therefore he ſhould not ſtate them; and afterwards he gave all the reſt of his poſſeſſions, real and perſonal, to his truſtees, the Rev. Mr. Woodford, and other gentlemen; and, after giving the reſidue of his property in general terms to his truſtees, he proceeded to declare what were the truſts on which the truſtees are to hold this eſtate. The truſts were, that they do and ſhall, from time to time, during the natural lives of his ſons, and of their children (naming them) in all amounting to the number of ſeven; and alſo during the lives of ſuch other of his ſons' children as might have iſſue living at the time of his (the teſtator's) death, without any limitation. During all this time, he directs all the property of his real eſtate to accumulate, and the rents and profits to go on with other real eſtates, and directs the proceeds of theſe real eſtates, which ſhall, from time to time, be purchaſed by the accumulation of the former eſtate, until a certain time, when this property is to be divided; and then he directs after the deceaſe of theſe ſeveral perſons, ſo that three of them ſhould be only ſurviving, that an equal partition ſhall be made of the manors, lordſhips, &c. ſo to be purchaſed; and that they ſhall be divided into three parts of equal value, or as nearly as poſſible of equal value, and the firſt of theſe ſhares is to go to the oldeſt male lineal deſcendant of his eldeſt ſon, Peter Iſaac Thelluſſon; and then he diſpoſes of the other two-thirds, and directs that they ſhall go to the eldeſt male lineal deſcendants of his other two ſons, with the like croſs-remainders as in the other caſe; and in default of their iſſue, then he gives the whole of the property to the king or queen of England, for the time being, to be applied to the uſe of the Sinking Fund. He likewiſe gives his truſtees a power to cut down timber, and directs that the money ariſing from the ſale of it, ſhall be applied to the purchaſe of land, to accumulate as before directed. There is a proviſo in his will, by which it ſhould ſeem, that he did not mean to confine the property abſolutely in the male line; for he directs, that whoſoever ſhall become entitled to it ſhall take the name of Thelluſſon; by which it rather ſeems that he thought there might be a lineal deſcendant through a daughter; otherwiſe to ſay that the

perſon entitled to take the name of Thelluſon would be ſuperfluous.

Here *Mr. Mansfield* enumerated all the family, as the will applied to them in the above limitations, at the time of the teſtator's death; it amounted to ſeven in number, and two were born a ſhort time after the teſtator's death, which it was ſuppoſed came within the ſenſe of what he meant by the expreſſions "within a reaſonable time after my death."

By the courſe of events that had happened, there were nine lives which came under the ſcope of the teſtator's limitation; during theſe lives the accumulation was to continue. Under the ſuppoſition that the accumulation was to continue during the ſeven lives only, the thing would appear to be monſtrous. It was indeed a mere queſtion of computation, but computing that the lives would not be all extinct in leſs then ſeventy years, it was poſſible that the fortune of one individual, under the limitations of this will, computing the preſent ſtate of the funds, would not be leſs than 18,200,000l. ſterling.

The words of the will were ſuch as it was extremely difficult to underſtand. What the teſtator meant by the words "the oldeſt male lineal deſcendant," eſpecially as he did not confine it to the male line, but through the female alſo, as appeared by his having directed that the perſon who ſhould be entitled to the property ſhould take the name of Thelluſſon was very doubtful. But the property upon the above moderate computation, which might poſſibly be poſſeſſed by one individual was upwards of eighteen millions ſterling, a property which, he believed, was enjoyed in no country in the world by any individual, nor would it be allowed in any country, he believed, and leaſt of all in England, for it was a property that was to be taken out of the common ſtock of the community, and kept in a uſeleſs ſtate for ſeventy years. Thoſe who who were to contend in favour of the limitations of this will, muſt go a great deal further than to ſay, a man may direct that his property ſhould be kept out of the common ſtock during ſeven lives after a teſtator's death, that is only for about ſeventy years, but they muſt contend, that he may do ſo for ſeven hundred or for ſeven thouſand years, for that was the extent of the principle they muſt contend for.

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He did not mean to say, that a will must be set aside merely because there were some absurdities in it; he knew the contrary; but he meant to say, that any will that was monstrously extravagant in its nature, and the carrying of which into effect would be prejudicial to the public interests, was a will made against the rules of law. Now, that an individual should, by the accumulation of seventy years, become possessed of Eighteen Millions sterling, was a thing which he believed was never heard of in any country in the world, and would be intolerable in this. But this was not all; for if this testator had it in his power to make property accumulate during the lives of these seven persons, and then to give it to the eldest male issue of the survivor, he might as well give it in this manner: To be accumulated during the lives of all the members of both houses of parliament (for they were persons all in being at his decease) and to the oldest male lineal descendant of the survivor of them. Such a proposition would be monstrous, and yet it was precisely the same in principle as that which was now before the court.

He thought he ought not to trouble his lordship with cases upon such a question, for he knew of no case that bore any resemblance to this extraordinary device. He could not help observing, that so far was this sort of limitation from favouring the possession of property, that it went directly against all ideas for which such a thing as property was ever established in society. The only object of declaring that there should be such a thing as property was, that individuals might enjoy it; but here there was to be no enjoyment, but the whole mass was to be taken and kept out of the common stock until it amounted to eighteen millions, and then one individual was to possess it all—no human being was allowed to derive any advantage whatever for seventy years from this limitation. That, on the face of it, shook the ideas of every man who looked for such a thing as propriety in the affairs of life. He therefore took it for granted, that unless those were to support this will, produced something like it, his Lordship would hardly be prevailed on to establish it.

He then proceeded to take a view of the doctrine laid down in cases as they applied to wills that were opposed as containing limitations contrary to law; the principal

case was that of the Duke of Norfolk determined by the late Lord Chancellor Nottingham.

The Lord Chancellor asked here, if there was any accumulation of property directed under that will? His lordship was answered in the negative; and *Mr. Mansfield* proceeded.

The Lord Chancellor in that case had made some observations, by which it was not difficult to discover which way he would have decided this case, had it come before him.—He said, "It has been asked at the bar, where we are to stop in these cases? I will tell you where to stop: I will stop where any visible inconvenience doth appear; for whereſoever the bounds of reason or convenience are exceeded, the law will soon be known." And this was a quotation which might be depended upon in point of accuracy; for it was taken from the manuscript of Lord Nottingham himself. By this quotation, as he had already said, it was easy to see what the decision of that Noble Lord would have been upon this case, if it had come before him, for here the bounds of reason and convenience were not only exceeded, but all reason, and the common convenience of society itself, were disregarded. The rule of adhering to reason and convenience in these cases was well known; it was the same in a case where 50l. was in question as if it was 50,000l. but here the thing was so enormous as to strike the mind at once with its amount, and to be of itself almost an argument against the devise. Nothing could be so prodigious or more intolerable in any country, especially in this, than that any single individual should possess eighteen millions of money. He would be in a very different situation from any person that was ever yet a subject of the Crown of Great Britain.

It was impossible to calculate the evil effects this sort of limitation might produce. All the produce of an enormous mass of wealth is made to accumulate, and no human being is to have the least advantage of it for seventy years, and then, no one human being now alive (most probably) will benefit from it, for it is to be divided then into three parts, and given to the eldest male lineal descendants—Now it was impossible to say exactly whom the testator meant by the "eldest male lineal descendant."

dant." [Here Mr. Mansfield went through the various degrees of consanguinity, and maintained, that it was impossible to ascertain who the testator really meant by the "eldest male lineal descendant," and if that was impossible, he contended it was a very good reason for setting the limitation aside.]

He might be told that it is no uncommon thing to violate the rules of grammar in construing a will, and that the thing to be attended to in such a case, was the intention of the testator. To which he would answer, he would do so where the intention of the testator was reasonable; but where the will was such as no man living could attempt to call a rational one; and when it was not to the advantage of any one human being now alive; and when it was of no service to the State, but, on the contrary, injurious to the interests of a whole community (for so it must be, if so much property was locked up for seventy years) the Court was not only not bound to carry this will into effect, but was not at liberty so to do. Upon the whole, he submitted to his Lordship, that (waiting for an answer to his arguments, and for the production of cases that should over-rule them) this will attempts at perpetuity of property, which the law of England abhors; goes beyond any other case that ever came before a court of law or equity; is expressly against what is called the policy of the law of every country in the world; and therefore, he trusted, the Court would declare it to be void.

The Lord Chancellor. This case is of a great deal of importance, and singular novelty; as it strikes me at present, I cannot do better for the parties than to ask for the assistance of two of the judges. It is, in my opinion, much better to do so than to send it to a Court of law. Indeed, as it is the direction of a trust, I hardly think I ought to take any other course. If you have no objection, I think I ought now to stop here, and as soon after the term as may be, I will ask for the assistance of two of the judges; and therefore I desire that two copies of the will may be got ready, exactly like the copy which has been delivered to me. Here the business ended for the present.

Wedneſday, Dec. 5.

Theſe are two bills; the one of them for the purpoſe of ſetting aſide, the other for eſtabliſhing the will of the late Mr. Thelluſſon. The former filed by the family, the latter by the truſtees of the teſtator.

The caſe came on before the Chancellor, and was ably opened by Mr. Mansfield on behalf of the Plaintiffs in the firſt bill; when his Lordſhip obſerving upon the importance and the novelty of it, deſired that he might have the aſſiſtance of two of the judges in the diſcuſſion of it; and for that purpoſe ordered it to ſtand over.

This day it came on again, when the Maſter of the Rolls, and Mr. Juſtice Buller, and Mr. Juſtice Lawrence, attended to aſſiſt the Chancellor.

Mr. Mansfield proceeded to open the caſe on the part of the family complaining of the proviſions of the will, as containing deviſes contrary to the rules of law. He re-ſtated all he had formerly urged upon the queſtion when it came firſt before the Lord Chancellor; but there were two additional points which we ought to mention. They were theſe: That, as the property in queſtion was left, it could not be enjoyed in leſs than ſeventy years, and then it would amount to upwards of nineteen millions; but, if it ſhould be kept up for a century, it would amount to a fortune for one individual greater than the ſovereign himſelf poſſeſſed—a thing never yet tried, nor the effect of it gueſſed at in any ſtate of human ſociety. The ſecond was this—Suppoſing that this ſort of phrenzy were to enter the heads of half a dozen men of ſuch property as that of the late Mr. Thelluſſon (and there were many richer men than him in this country, for the property he left was only about 600,000l. ſuppoſing, he ſaid, that half a dozen ſuch perſons were to be ſeized by ſuch a fit of madneſs as this teſtator was, and ſhould leave their property as he had left it, it was a matter of very curious ſpeculation what effect ſuch a diſpoſition of property might have upon the ſtate itſelf, and what would be the condition of ſociety in it?—He maintained, that to argue for this will, it muſt be contended, that a limitation may be good, though it is not made to any life or lives in being." In ſhort, there was no caſe that ever was decided in any court of juſtice that bore any reſemblance to the preſent, and it would be contrary to the analogy of

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all law, and contrary to the policy of any ſtate, and moſt of all, of this, to carry ſuch a will as this into effect.

Mr. Grant made alſo a very able ſpeech on the ſame ſide.

Mr. Hargrave alſo on the ſame ſide commenced a very elaborate performance, and proceeded for an hour, when the Lord Chancellor deſired the buſineſs to be adjourned.

The moſt important part of the proceedings now will be, that which ſhall be ſaid in ſupport of the will, and then the judgment of the court.

CRIM. CON.

Ricketts, Eſq. *v.* Hargrave, Eſq.

YESTERDAY an inquiſition of damages was held before ——— Birchall, Eſq. under Sheriff of the county of Middleſex, at the Sheriff's Office, Took's-Court, Curſitor-Street, in a cauſe wherein Captain Ricketts, of the Navy, was plaintiff, and Captain Hargrave, of the Lancaſhire fencibles, was defendant, for criminal converſation with the plaintiff's wife, Lady Elizabeth Ricketts, late Lady Elizabeth Lambert.—The damages were laid at 20,000l.

Mr. Dallas ſaid, he attended as counſel for Capt. Ricketts, who had brought this action againſt Capt. Hargrave, in order to receive ſuch ſatisfaction in damages for the injury he had ſuſtained, as the jury ſhould think themſelves bound to give. In caſes of this ſort there were generally two queſtions to try; firſt, Whether any adultery had been committed? and if that was proved—then, 2dly, What damage the plaintiff was entitled to receive? But, in the preſent inſtance, the jury were releaſed from the firſt of theſe conſiderations, as the defendant had ſuffered judgment to go by default, and thereby confeſſed himſelf guilty of the offence the plaintiff had imputed to him. The plaintiff was an officer in the navy, ſon of Mr. Ricketts, who in his life time was a gentleman of conſiderable wealth in the iſland of Jamaica; he was alſo the heir of Earl St. Vincent. In March 1793, he became acquainted with the lady whoſe conduct had produced the preſent action. She was then Lady Elizabeth Lambert, the

the eldeſt daughter of the late, and ſiſter of the preſent, earl of Cavan. It was hardly neceſſary to deſcribe what were her perſonal accompliſhments; ſhe was allowed to be the moſt beautiful of women; there was in her countenance a characteriſtic expreſſion of innocence, candour, and open ingenuouſneſs, that ſeemed to indicate ſhe poſſeſſed a mind where the modeſt timid virtues delighted to dwell. Captain Ricketts became enamoured, and paid his addreſſes to her; and all friends conſenting, he led this amiable creature to the altar, where ſhe made that vow ſhe had ſince been induced to prophane. Soon after the marriage, they went to the houſe of a reſpectable gentleman, Mr. Ricketts, the uncle of the plaintiff. They afterwards retired to a cottage in the foreſt near Southampton. In Auguſt, 1794, lady Elizabeth was brought to bed of a daughter; and in December 1795, ſhe was delivered of another daughter alſo ſtill living. Mr. Dallas proceeded to ſtate circumſtances as more particularly detailed by the witneſſes. He mentioned the plaintiff being called abroad in the ſervice of his country, the exemplary conduct of Lady Elizabeth for ſeven or eight months after his departure; her ſubſequent acquaintance with the defendant; and the alteration that immediately took place in her conduct. As to the queſtion of damages, he would leave it to the jury to determine what that man deſerved to pay, who in the abſence of another, went into his houſe, beheld his ſmiling infants, and yet could be guilty of the deliberate ſeduction of their mother. He was perſuaded they would conſider it a caſe of the worſt and blackeſt ſort ever ſubmitted to a jury. By the verdict of the jury, it was to be decided whether, when a brave officer was abſent in the ſervice of his country, a baſe ſeducer was to enter his houſe, diſhonour his wife, and diſgrace his children. He concluded by truſting that their feelings would induce them to meaſure out to the plaintiff as large damages as ever were given for a ſimilar injury.

Mr. Thomas Budell produced the copy of the regiſter of the marriage of Capt. Ricketts with Lady Elizabeth Lambeth, in September, 1793.

George Ricketts, Eſq. uncle of the plaintiff, ſaid the marriage of the plaintiff and his wife was founded perfectly in affection. Witneſs ſaw Captain and Lady Ricketts

Ricketts repeatedly when they reſided at Southampton, but did not ſee them often at the cottage; they were perfectly happy, as much ſo as two young people could poſſibly be.

Sir John Haynes, Bart. ſaid, he became acquainted with Captain and Lady Elizabeth Ricketts, in conſequence of her illneſs at Southampton. It was a dangerous illneſs, and Captain Ricketts was always preſent. His conduct appeared that of the moſt affectionate huſband he had ever ſeen. Lady Elizabeth's illneſs threatened her diſſolution, and Capt. Ricketts attended her night and day.

Mrs. Breamer ſaid ſhe reſided at Southampton; her huſband kept the Dolphin Inn. Witneſs had a cottage in the Foreſt, and Captain Ricketts rented another cottage near to it. Lady R. had before devoted her time to her children, to drawing and other amuſements, but at that time ſhe went more frequently into company. Captain Hargrave viſited her at the period this change took place. Witneſs took notice of his viſits, and cautioned the Defendant to be very particular as to his conduct to Lady E. Ricketts. At the ſame time ſhe ſaid, though ſhe believed both perfectly innocent, yet the Lady's reputation would ſuffer in the opinion of the world, and ſhe begged him to deſiſt viſiting her. Witneſs never ſpoke to him further on the ſubject.

Thomas Vulkiſs lived as butler with Lady Elizabeth. After Capt. Ricketts had left the country, Capt. Hargrave viſited at the houſe; recollected Lady Elizabeth going to London about the 11th of March, 1797, only her maid and the witneſs was with her; ſhe ſtopped at Popham-lane. Captain Hargrave was there, and was in company with Lady Elizabeth in the evening; witneſs could not ſay whether he ſupped or not. He did not ſuſpect any thing, as he conſidered him an intimate friend of the family. Lady Elizabeth went to Lord Cavan's, her brother's houſe in Dover-ſtreet, and Captain Hargrave called twice upon her. Captain Hargrave was about twenty-one or twenty-two, and looked very young.

Mr. George Richards ſaid, that in 1795 the plaintiff was appointed to La Magicienne, with orders to join Lord St. Vincent's fleet. The conduct of Lady Elizabeth was that of one diſtracted; ſhe wrote to the witneſs to accompany her to Leghorn, in order that ſhe

might be near her husband. Capt. Ricketts was inclined to indulge her, but the witness reasoned with them, and pointed out the absurdity of it. Soon after the plaintiff went away he took two Spanish prizes, and remitted, at different times, bills to the amount of 3000l. for the use of Lady Elizabeth. When he was informed of his wife's incontinence, he was greatly affected.

Mr. M'Intosh addressed the jury in behalf of the defendant, Capt. Hargrave. He observed that nothing could relieve him from the just apprehensions he felt, in consequence of the great abilities with which he had to contend, but the consciousness that he had the strongest case of mitigation on the part of the defendant that ever was laid before a jury. He admitted that in other places juries were not merely to consider the private damage a man sustained by such an injury, as that of which the plaintiff complained, but were bound to contemplate the injury the public suffered by an offence which threatened the destruction of morality and the happiness of society; but here, unless the jury assumed an authority which was not committed to them, they could have nothing to consider with respect to the injury done the public. The learned counsel had stated this as an aggravated case, by supposing there was but one circumstance that could extenuate it, namely, improper behaviour in the husband, but he had not stated that the guilt on the part of the defendant might be lessened by the improper behaviour of the wife. He was sorry to say, though the beauty of Lady Elizabeth's countenance gave a promise of every opening virtue, that it was fallacious; that candour, openness and ingenuousness which appeared in her face was not to be found in her heart. He said, he was capable of proving that the first advances were made by Lady Elizabeth, that she was the seducer, not the seduced, and that if there was any plan of seduction it was carried on by her and not the defendant. He desired the jury to consider the difference of rank between the defendant and Lady Ricketts, the former an officer without fortune, the other a lady descended from the first blood in the country, and renowned for her beauty; what insanity must it not have been for the defendant to have made the first advances to a woman so fenced round by her situation and rank in life. The learned counsel, after arguing

guing with uncommon energy and eloquence upon the improper conduct of Lady Elizabeth, in disregarding the affection of her husband, her duty to her children, or the opinion of her friends and the world, maintained, that the result of all the circumstances of the case was, that she had made the first overture, and not the defendant. He must advert to the subject of damages, observing that the defendant was the youngest of three orphan children, dependant on an uncle, whom he had offended by this transaction, and stripped of every thing but the emoluments of his profession, and that heavy damages must operate as a perpetual imprisonment or banishment; he therefore trusted a fortieth part of the damages laid in the declaration would be as much as the defendant's guilt deserved, or his abilities enabled him to pay.

The jury retired for about ten minutes, and at their return gave their verdict for *One Thousand Pounds*.

A DECISION *in the* KING'S BENCH *respecting* INDEMNITY.

IF a public officer be authorized by act of parliament to seize certain goods, and there is no indemnity in that, or any other act, for what they may do in the due execution of their office, they must act at their own peril; and they will be liable to an action for seizing the goods, if it ultimately turns out that they were not the subject matter of seizure, even though there was a probable cause for seizing them. Thus in the case of *Warne* v. *Varley and others*, *Mic. Ter.* 36 *Geo. III.* where an action of trespass was brought against the defendants, who were searchers of leather, under the stat. 2 *Jac.* I. *c.* 22, it appeared, that the searchers, by the 32d section of that act, are authorized to seize any leather that they may find offered to sale, not tanned according to the act, and retain it until it be tried by triers, who by the 33d and 34th sections, are to be appointed for trying the same after the seizure. In this case, the defendants, in their capacity of searchers of leather, and acting according to the best of their judgment, had seized a certain quantity of leather which, they thought, had not, after the tanning thereof, been well and thoroughly dried.

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The triers, appointed according to the act, determined that the leather had been well and thoroughly dried, and reſtored it to the plaintiff. For this ſeizure the plaintiff brought his action; and on the behalf of the defendant, it was urged, that the perſons appointed ſearchers, being compellable by the act, under a penalty, to take upon themſelves the office, it is not reaſonable that, when they act fairly, they ſhould be made treſpaſſers, and liable to an action for a miſtake in the judgment they are compelled to exerciſe. But to this it was anſwered, that the defendants ſtood in the ſame ſituation as cuſtom-houſe and exciſe officers formerly did, who, till the acts paſſed for their protection, acted at their peril, and were anſwerable to the party injured, in an action for any wrong ſeizure they might make, though there was a palpable ground of ſeizure. THE COURT were of this opinion, and there was judgment for the plaintiff. For by Lord *Kenyon*, Ch. J. I ſhould have been glad to have found ſome ground on which the defendants' juſtification could have been ſupported, becauſe they appear to have acted fairly and *bona fide*; for it ſeems reaſonable, that if theſe ſearchers exerciſe their authority *bona fide*, and only ſeize ſuch leather as in their judgment ought to be examined, they ſhould be protected: but the act of parliament affords them no ſuch protection, it only empowers them to ſeize leather which is not tanned according to the true intent and meaning of the act; and according to the record of the pleadings in this caſe, it appears that the defendants ſeized leather which the ſtatute did not authorize them to ſeize. This caſe does not differ in principle from thoſe of cuſtom-houſe and exciſe officers. *Cuſtom-houſe officers were, until a late act of parliament was paſſed to protect them, liable to an action for ſeizing goods, if it ultimately turned out that the goods were not the ſubject matter for ſeizure, even though there was a probable cauſe for ſeizing them.* Exciſe officers continued in this ſituation to a later time, upon a ſuppoſition that the ſtatute reſpecting cuſtom-houſe officers extended to them; and when it was diſcovered that they were not protected by the former act, the legiſlature made a ſimilar law for their protection. So in the caſes of juſtices of the peace and conſtables, the legiſlature have made laws in their favour, when acting in the execution of their office. All theſe inſtances ſhew the propriety of protecting perſons acting

acting under this act of parliament, when they act *bona fide*; but the legiſlature not having given them any protection except when they ſeize leather of a certain deſcription, the only queſtion is, whether the leather in queſtion was or was not ſubject of ſeizure; and that queſtion is againſt the defendants by their own admiſſion: the other judges concurred, and delivered opinions to the ſame effect. *6 Durnf. & Eaſt*, 443.

COMBINATION.

The King *v.* Thompson, *and* Ten Others.

THIS was a caſe of immenſe importance to the public. It was a proſecution inſtituted by ſome journeymen ropemakers againſt their maſters, for a conſpiracy to compel them to work on what terms the maſters pleaſed; conduct as contrary to law as any conſpiracy that can be entered into by the journeymen to raiſe their wages.

This indictment charged the defendants with having held meetings, and having entered into a reſolution, the objectionable part of which is this:—"That neither of us (the maſters) will retain or employ any perſon who ſhall have left his place without the conſent of the perſon he may laſt have worked for."

The attorney for the proſecution was unable to make out, in proof, that the attorney for the defendants had been ſerved with a notice to produce this reſolution, and therefore the proſecutors were not at liberty, according to the rules of evidence, to read the copy of the reſolution, it being an eſtabliſhed rule of law, "that none ſhall be received but the beſt evidence which the nature of the thing is capable of admitting;" and therefore the defendants were entitled to their acquittal.

Lord Kenyon ſaid he did not like the laſt part of this agreement or reſolution of the defendants. Perhaps he ſhould not ſpeak upon the ſubject now, becauſe it could only be extrajudicially that he ſpoke at all, but he thought the welfare of the community demanded of him a few words. There poſſibly might, and probably did, exiſt ſome abuſes in the conduct of the men that called for ſome reformation; but this was not the way to obtain that object. His lordſhip ſaid he was not perſonally acquainted with any of the defendants, but he knew that

ſome of them were extremely high in the commercial world. This was a point of great importance to the community. Much of the deareſt intereſts of trade depended upon it. Men ſhould not combine to make reſolutions to the detriment of others, or that might have that operation; for although good men would make none but a good uſe of ſuch a reſolution as this, yet it opened a door to the diſpoſition of the worſt. If any maſter ropemaker chuſed to turn a journeyman out of his rope yard without giving him his diſcharge, the conſequence would be, if this reſolution was followed up, that he could never be employed by any other maſter, ſo that if any maſter had an implacable animoſity againſt any man, this reſolution would enable him to carry that temper into effect; the men would thus become the ſlaves of the maſters. This was neither juſt nor legal. This combination was extremely dangerous, it might produce others—the country might be undone. It ſhould therefore be diſſolved, and that before the ſun ſets this night.

Mr. Garrow ſaid that this was unqueſtionably a caſe of great importance, and he ought to ſay a word or two upon the ſubject of it. A great part of the commerce of this country, and what was more important ſtill, much of the ſafety of the nation, depended upon this ſubject, and he thought that much good would follow this ſhort diſcuſſion of the caſe. It was not from the inſtruction of an ignorant attorney that the motives of theſe gentlemen were to be judged of. They had over and over again expreſſed their wiſhes to their men to do them juſtice. He would pledge himſelf, as a man of honour, that the great object of the maſters was to afford to their men the protection of fathers. They wiſhed them to labour as freemen, not as ſlaves, which indeed they would become, if they followed the evil advice of thoſe who induced them to combine againſt their maſters, for it was that which produced this reſolution on the part of the maſters. The object of the reſolution was to extend the proviſion of the Statute of Elizabeth to the caſe of the journeymen ropemakers.

Lord Kenyon ſaid that could not be done, for that the great object of the ſtatute of Elizabeth related to ſervants in huſbandry.

Mr. Garrow ſaid, that by the common conſent of all mankind, it was clear that when a man left his maſter, without

without conforming to his orders, he could not expect to have a good character. There was no earthly feeling but this, backed by the deſire of preſerving this country from ruin, that induced the maſter rope-makers to do as they had done in this buſineſs, and they only wiſhed to compel their men to behave well, for which purpoſe they had determined to employ none but who had good characters from their laſt maſters. He believed, however, that juſtice would be done, (and that was the object of the maſters, as well as the moſt ſenſible of the men) between the parties, and the men would find that the maſters would co-operate with them in an application to the legiſlature to regulate the wages and direct the conduct of the men. He hoped that from what had happened, the parties would now go on in harmony together.

Lord Kenyon ſaid, he wiſhed the legiſlature was applied to upon this very important occaſion, for he foreſaw that mighty inconveniencies might ariſe from any general diſagreement between the maſters and men in this trade. The Navy of the country depended upon it. But ſtill he was bound to ſay he thought this agreement of the maſters was illegal.

Mr. Mingay, counſel for the Proſecution, ſaid, he verily believed that this converſation would have a better effect than a conviction of the Defendants. Now that his lordſhips opinion had been given upon the reſolution of the maſters, he hoped the maſters would be, what they ought to be, and what it was the object of this proſecution to compel them to be, attentive to the comfort of the men. This reſolution muſt be diſſolved, and he hoped the maſters and the men would go on harmoniouſly together.

Mr. Garrow ſaid, that every thing would be well upon this occaſion if the men followed the rules of common ſenſe, and remember it is not by combination they are to effect any thing to their own intereſt: let them truſt to their maſters, inſtead of liſtening to the evil advice of thoſe who would lead them to deſtruction. This was not a trifling buſineſs; he was not ſpeaking at random: the Northern fleet had nearly been prevented ſailing in conſequence of ſome combinations among the journeymen ropemakers. It was eaſy to ſee that the intereſt of this nation was not to be trifled with in this manner with impunity. He was ſure it would fall very heavily on thoſe who

who forwarded any combination in this buſineſs, if there ſhould be any ſuch. The maſters bowed to the opinion of the noble and learned judge before whom this converſation was ſuffered to take place, and which was indulged on account of the intereſt which the public had in it.

Mr. Erſkine ſaid, he was originally counſel for this proſecution, but having a retainer before that time from the maſter rope-makers, he was prevented from taking a brief for the proſecution, and he thought it indelicate to take a brief on the other ſide, having been deſired to take care of the intereſts of both. He ſhould, therefore, now only ſay, that from what he had ſeen of the proceedings of this day, he was induced to hope that the parties would go on in harmony together.

Lord Kenyon ſaid, he hoped ſo.

CRIM. CON.

CAMPBELL *v.* ADDISON.

THIS was an action for criminal converſation between the Defendant and the Plaintiff.

Mr. Erſkine made a very eloquent ſpeech for the plaintiff:

The circumſtances of the caſe are ſhortly theſe:—The Plaintiff is Dr. Campbell, a native of North-Britain, and married his lady, the daughter of Sir James Campbell, Baronet (of North-Britain alſo) in December, 1785. The Plaintiff, to increaſe the fortune of his family, went with his wife to India, where they lived in happineſs together, and their union was bleſſed by four children. The Plaintiff being deſirous that his children ſhould be educated in Europe, ſent them to London under the care of the mother. She accordingly took the charge of the children for the voyage, and having arrived, ſhe went to the houſe of the defendant, at Blackheath, he being her brother in law, married to her ſiſter, ſeveral children being the fruit of that marriage alſo. Here the Plaintiff's wife was expected to have been protected, and, having a deſire to ſee her father, who lives in the North of Scotland, near Queen's Ferry, the defendant accompanied her thither in a poſt-chaiſe, and in the courſe of that journey it was diſcovered, by the Defendant's ſervant, and

and by the poſtillion, and alſo a waiter at one of the inns, that a criminal intercourſe ſubſiſted between Mr. Addiſon and Mrs. Campbell, his wife's ſiſter.

There was no evidence whatever of the want of virtue in the Plaintiff's wife until the Defendant ſeduced her: but afterwards there were ſuſpicions of her conduct with an officer at Newcaſtle.

Mr. Erſkine ſaid, he had ſome evidence that might attempt to paint the horror of the plaintiff, when he heard, by letter, in India, of what had happened between his wife and her ſiſter's huſband; but he doubted whether it was legal evidence.

Lord Kenyon ſaid, that was a ſubject that might ſafely be left, by way of inference, to the feelings of the jury. When a celebrated painter deſpaired of being able to depict a ſcene of miſery, he drew a curtain, leaving the imagination of the ſpectator to infer what was behind it.

Mr. Erſkine ſaid, he was ſatisfied that his Lordſhip ſhould be the painter in this caſe.

Mr. Gibbs addreſſed the jury for the defendant in mitigation; he obſerved that his client had been a merchant of conſiderable eminence near the Royal Exchange; but that ſome years ago his houſe had ſtopped payment; ſince which time both himſelf and family depended upon his own perſonal labour for ſubſiſtence. That if the damages were moderate, perhaps the defendant's friends might pay them; but if they were large, he muſt be locked up in gaol for life. There were young, innocent, and helpleſs children of the defendant, in whoſe behalf he implored the mercy of the jury.

Lord Kenyon ſaid he had now, for ſeveral years, in the place where he ſat, with the beſt aſſiſtance which the wiſdom of the world had ever yet deviſed, namely, the aſſiſtance of twelve gentlemen of education, compoſing a jury, endeavoured to deter men from committing the offence which was now complained of. He had endeavoured, in adminiſtering juſtice, according to the law of the land, to diminiſh the number of theſe actions, which was a ſpecies of mixed action, compounded of public crime, and civil individual injury. He had endeavoured to give ſuch ſatisfaction as was poſſible to the party injured, and at the ſame time to hold out a leſſon that might correct the morals of men, and do away one of the greateſt evils that the community had now to com-

plain of; he could have hoped that ſuch endeavours had been attended with better ſucceſs; but ſtill vice ſtalked about with daring front. However, that was no reaſon for judges and juries relaxing in their duty.

The caſe now before them was of two parts:—firſt, the fact of adultery, and, in the event of which being found againſt the defendant, then the conſideration of damages.

It had been hinted at by the eloquent advocate for the plaintiff, that perhaps this offence ought to become the ſubject of the *criminal* juſtice of the country, ſince *civil damages* had hitherto been found inadequate to its ſuppreſſion—Whether the law ought ſo to be made, his lordſhip ſaid he was not wiſe enough to ſay, but, in the laſt century, the law puniſhed the offender in this caſe with death—Whether it was fit to re-enact that, or to make any other law upon the ſubject, the legiſlature alone had the wiſdom to determine.

His Lordſhip then proceeded ſhortly over the material circumſtances of the caſe. He then made a few obſervations on the aggravation of it. The Defendant, who was entruſted to be the protector of this lady, became her ſeducer! her brother-in-law!—the huſband of her ſiſter! If the jury were ſatisfied that the fact of the adultery was proved, then their duty would be fulfilled by ſaying what damages ought to be paid by the defendant.

The jury withdrew, and in about half an hour brought in a verdict for the Plaintiff—Damages 5000l.

Non-Reſidence of the Clergy.

MIDDLETON *qui tam* v. BLAKE.

THIS was an action to recover eleven penalties of 10l. each of the defendant, who is Vicar of St. Leonard, Shoreditch, for non-reſidence upon his vicarage.

It appeared clearly in evidence that this reverend gentleman had lived for years, and lives ſtill, in Devonſhire, but that he comes occaſionally to town, and preaches at the pariſh church; but that in reality he had no fixed and permanent reſidence in the pariſh of which he is vicar, and that the office of preaching, &c. is performed by a curate who reſides in the parſonage houſe

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The evidence being thus concluſive upon this caſe, *Lord Kenyon* ſpoke to the following effect:

In every well-conſtituted government, there muſt be attention to the ſervice of God; and religion muſt always be in ſtrict and cloſe alliance with the ſtate, or it would be impoſſible for things to go on, ſo that the ſtate may proſper.

Before the reformation, it was among the crying evils of this kingdom, that thoſe to whom the celebration of religious ſervice was committed, received the emoluments without due attention to the duties of their ſacred functions. Large benefices, and indeed many of the rich biſhopricks of this kingdom were committed to foreigners, and it was almoſt the firſt object of the reformation to require the reſidence of eccleſiaſtical dignitaries at the place where their duty ought to be performed. Our firſt duty, unqueſtionably, is a duty to God; without the performance of it we are incapable of any good—this duty therefore cannot be neglected, even with ſafety to a ſtate. This gentleman is the vicar of a pariſh—I do not ſpeak with certainty, but I believe, when a vicar takes upon him the holy office, he takes a ſolemn oath for his reſidence.

Mr. Gibbs. Which the rector does not.

Lord Kenyon. I think the vicar takes an oath of reſidence; but beſides that, and without adverting to the obligation of ſuch an oath, there muſt be, on the mind of every moral man, an impreſſion, that he ought not to receive the emoluments without performing the duties attached to any office.—Either give up the emoluments, or perform the duties of your ſtation, is a maxim of juſtice and common ſenſe.

It has been ſaid that the Biſhop of London had diſpenſed with the perſonal reſidence of this gentleman at the Vicarage, or in the Pariſh; or that he intimated an opinion, the vicar was not bound to reſide there. If that were proved, which it is not, it would have no effect on the legal conſequences of this action; although it would have had a great effect on my mind, for I know, from repeated inſtances, the great anxiety of that learned and reverend prelate about enforcing reſidence of clergymen in the pariſhes of which they had the care. I know of a fact where a very meritorious clergyman, and who was alſo a great favourite of that biſhop, failed to have an appointment,

pointment, merely becauſe it would be inconvenient to him to reſide in the pariſh, and another meritorious clergyman, but leſs the favourite of that biſhop, was appointed to the office.

We are here in a court of law, and the law muſt be adminiſtered. In my mind, the law requires that the reſidence muſt be in the parſonage houſe, if there be a parſonage houſe in the place. I remember an authority, which will never be recollected without veneration, while the judicial hiſtory of this country is recollected, it was that of Lord Mansfield, my predeceſſor on this bench, in the caſe of Dr. Wilſon, of a place in Weſtminſter; he had built him a new houſe among the new buildings in the neighbourhood, as being more commodious than the place allotted to him; complaint being made of his non-reſidence, he was reproved for it; for the ſame ſentiment and doctrine, there is the authority of Sir Michael Foſter, and a higher there cannot be. I ſay, therefore, it is the bounden duty of the vicar to reſide in the parſonage houſe, if there be one, or elſe ſomewhere in the pariſh. I do not ſay, there is no caſe in which this reſidence may not be diſpenſed with; a caſe of phyſical neceſſity certainly would do it; and if it had been made out to us, that this gentleman could not, conſiſtently with due care to his exiſtence, reſide there, undoubtedly the law would not compel him to reſide—but this gentleman has a diſorder to which the human ſpecies is very liable, the gout, that was no proof it was impoſſible for him to live in St. Leonard, Shoreditch.

This is an important action to the morals of the public. It is important that the vicar of every pariſh ſhould not only preach his weekly ſermon to his pariſhioners, but that he ſhould, by his good example, conciliate the temper of his pariſhioners, and contribute to bringing about that charity and good-will which is the evidence of the ſpirit of our holy religion; and which the hiſtory of this court too amply ſhews to have been long wanting, in many inſtances, in this very pariſh, in which a litigious ſpirit has been too often manifeſted. It is therefore proper that the vicar ſhould reſide in the pariſh that, by the influence of a good and moral life, he may allay thoſe heats and animoſities.

The learned and reverend defendant is ſtated to be a very good man. I dare ſay he is; and if ſo, he will be ſorry

ſorry he has not properly performed his duty by reſiding among thoſe whom it is his office to inſtruct, but as he has not made out any good excuſe for his omiſſion of duty hitherto, he ſhould be admoniſhed by your verdict to be more attentive to it hereafter; and indeed I think it fortunate for the country, that there is now an opportunity of promulgating, by your authority, the law upon this ſubject. Had this gentleman ſhewn that he had another eccleſiaſtical benefice, and that he reſided on that, he would not have been liable to this action, for he is not bound to reſide in both. Taking the whole caſe as it is before you, the queſtion, whether he was properly abſent from this pariſh? is for you to decide. The penalties are 10l. a month, but no more than eleven of them can be recovered by one action, becauſe every action of this kind muſt, by the ſtatute, be brought within a year after the cauſe of action ariſes. It is a matter ſubmitted entirely to your diſcretion.

Verdict for the Plaintiff, damages 110l. being for eleven penalties.

ASSAULT.

Humphries v. Lord Camelford.

Mr. Gibbs ſaid, this was an action brought againſt the Right Hon. Thomas Lord Camelford, for an aſſault on the plaintiff, and truely ſorry he was to ſtate, againſt a Nobleman of the Defendant's high rank, ſuch facts as he had it in his power moſt ſatisfactorily to prove. The plaintiff was the ſon of a moſt reſpectable clergyman in the country, but had himſelf been brought up to trade in the houſe of Meſſrs. Wilkinſon, Hodgſon, and Michell, who were certainly the firſt chymiſts and druggiſts in the city of London, and about four years ago entered into partnerſhip in the preſent firm of Chamberlain and Humphries. On the 2d of April laſt, the nephews of the late Mr. Montgomery Campbell, the Eaſt-India director, who were at Eton School, were on a viſit to town, and in the evening were taken to Drury-Lane Playhouſe for their amuſement. Mr. Humphries went for the purpoſe of meeting them. He went to the front boxes by the way of Vinegar-Yard. There were about four ſteps neceſſary to mount to get into the lobby. The

Plaintiff had got up theſe four ſteps, and was looking through the glaſs of one of the doors of the boxes, in order to ſee whether his company were there. At this moment Lord Camelford came and puſhed him away; he aſked him why he did ſo? there was no quarrel between them, nor any improper language uſed by the Plaintiff, but Lord Camelford, without provocation, ſtruck him with his fiſt in the face, and knocked him down the ſteps. Surpriſed as Mr. Humphries was at this treatment, he got up and aſked Lord Camelford what reaſon he had for doing ſo? The anſwer was another blow as violent as the firſt, which knocked him again down the ſteps; and the conſequences might have been fatal, had not a gentleman who was coming up the ſteps broke his fall. Mr. Humphries again got up, and aſked Lord Camelford why he had done this? He told him his own name, and deſired to know who it was that had ſo improperly inſulted him? Lord Camelford made no anſwer: the queſtion was repeated, but no reply made; and then Mr. Humphries uſed an expreſſion which, under all circumſtances, no one could, and he was perſuaded the jury would not think improper, he told him he was a *ſcoundrel*. This certainly was an epithet which ought not to be uſed without great provocation, but he begged to know what denomination any perſon would beſtow on another who was unknown to him, had twice knocked him down, and when called on for his name had refuſed to give it? Lord Camelford had time for recollection, but did not uſe it. He returned to the attack, and knocked him down again. He was much more than a match for the Plaintiff, who indeed gave him no oppoſition. He at laſt left him with one of his eyes almoſt beat out of his head, wounded near the temple over the eye, and the blood guſhing out, and wholly diſabled by the treatment he had received. In this ſituation Lord Camelford left him, never once affording the leaſt aſſiſtance, but went to a different part of the houſe. The indignation of the perſons around was rouſed, and a conſtable was ſent for, who ſearched for Lord Camelford, found him, and carried him to the watch-houſe. It was not till he reached the watch-houſe that he told his name. The Plaintiff was bound over to proſecute, and afterwards preferred a bill of indictment, which was found. He, however, afterwards gave notice to the defendant that

that he would not follow it up, but would bring the preſent action. Mr. Gibbs ſaid, he ſhould be one of the moſt forward to find an excuſe for the Defendant, if poſſible; but really he could diſcover nothing to palliate his conduct. He hoped his learned friend would, for he was ſorry to ſee a perſon of the Defendant's high rank demean himſelf ſo. Was he intoxicated?—This would have been a bad excuſe; but if that had been the caſe, Mr. Humphries might have expected ſome apology from the 2d of April to the preſent time. No apology had been offered from that time to this; and therefore the Plaintiff was driven to ſeek that redreſs which he claimed by the verdict of the jury. When he ſtated, the Defendant had offered no apology, he ſhould have added that his conduct had aggravated that circumſtance, for there appeared in the newſpaper of the 22d of April laſt an advertiſement, publiſhed officially, and ſigned by his attornies, to this effect:—

"If the gentleman who happened to be ſtanding by, and ſaw the beginning of the diſagreeable tranſaction at the door leading to the boxes of Drury-Lane Theatre, on the night of the 2d inſtant, and whom one of the parties deſired to lend him a pencil, will leave his name at Meſſrs. Winterbottom and Dunn's, it will tend to prevent injuſtice, if this buſineſs ſhould be the object of legal inveſtigation."

This gentleman had been found, but not by this advertiſement. In fact he was the very perſon who had received Mr. Humphries when he was falling, in conſequence of the ſecond blow of Lord Camelford. This gentleman ſeeing the advertiſement in the paper, having never before known Mr. Humphies, thought it his duty to call on, communicate with, and inform him how far he had witneſſed the tranſaction: this was the perſon who was aſked for the pencil, but did not give it, he in fact having none. He ſhould not leave him to be called by the counſel for Lord Camelford, but would call him for the Plaintiff, who was deſirous the whole truth ſhould be known. The Jury would then ſay what compenſation ought to be received for ſuch an injury; a groſſer one he never heard of: here was a reſpectable young man, conducting himſelf peaceably at a place of public amuſement, beat moſt unmercifully without any cauſe, and no apology

apology afterwards offered, though the perſon, if a gentleman, could not but have been conſcious of the impropriety of his conduct. Mr. Humphries demanded redreſs of the Jury as a legal tribunal, conceiving himſelf entitled to large damages. He truſted they would ſhew, that no ſituation in life, no rank, however exalted, no opulence, however conſiderable, could put a man above the reach of the law; and concluded by expreſſing his firm perſuaſion, that a proper verdict would be returned by thoſe to whom the Plaintiff had ſubmitted his caſe.

James Bennett, the box-keeper of Drury-Lane Theatre, ſaid, he was attending his duty on the 2d of April: when half price was proclaimed, he ſaw two gentlemen at the top of the ſteps, leading towards the boxes from Vinegar-Yard; they were looking through the glaſs in the door; he heard one of the gentlemen ſay, he had as much right to look through as the other; immediately the one who was the taller of the two, whom he afterwards knew to be lord Camelford, knocked the other, who was the Plaintiff, Mr. Humphries, down; he fell head over heels down the ſteps. He got up and aſked him what he meant by that? Lord Camelford knocked him a ſecond time down the ſteps. He got up and aſked for a pencil to take Lord Camelford's addreſs with? No one gave him any, nor did Lord Camelford give him his addreſs when he aſked for it; upon which he called him a ſcoundrel; he ſeemed agitated by his falls, but was not in a paſſion. Lord Camelford, who was in the act of of going away, turned round, and gave him four or five blows in the face, and beat him about the eyes, one of which was cut open, and the blood ſtreaming down. The witneſs was called away to open ſome boxes, and when he returned, Lord Camelford was gone: he went to the upper boxes; he had not told who he was: he was afterwards carried to the watch-houſe.

On his croſs-examination by Mr. Erſkine, he ſaid, there was generally a very great crowd at half-price. He did not know how long Lord Camelford and Mr. Humphries had been looking into the box, or which had been there firſt, the box would have admitted two perſons. Being aſked whether Lord Camelford made a blow or only puſhed Mr. Humphries? he repeated, it was a blow he gave. He ſaid, Mr. Humphries, after being knocked down, aſked why he had done ſo, in the mildeſt tone of voice.

voice. The witneſs was farther interrogated, but repeated the ſame evidence he had given. Upon being reexamined by Mr. Adam, he ſaid, the defendant was a tall powerful man near ſix feet high, and the plaintiff a ſhort man, and comparatively weak.

Catherine Browne, a fruit-woman attending the Theatre, ſtated the circumſtance of the Plaintiff's coming into the houſe by the way of Vinegar-yard door, and looking through the glaſs into the boxes. She ſaid Lord Camelford came up at the ſame time; that the firſt words ſhe heard were, Mr. Humphries ſaying, he had as much right to look through as the other. Lord Camelford knocked him down, and the witneſs thought he muſt have broke his neck. He got up, and was knocked down a ſecond time; and when he roſe again, Lord Camelford ſaid, Who are you, and what are you? He replied, that he was a gentleman; that his name was Humphries, and he lived at No. 6, Clement's-Inn. He aſked Lord Camelford for his addreſs; but it was not given. Lord Camelford afterwards ſtruck him ſeveral blows on the face. Mr. Humphries ſaid, will no one come and take my part? No one interfered on either ſide. Mr. Humphries behaved with moderation; ſhe never ſaw any gentleman take ſuch ill treatment ſo mildly before in her life. She added, that there was no great crowd, and that Lord Camelford went away firſt.

Mr. Joſeph Cooper, a quaker, ſaid, he went into the houſe at half-price; he ſaw the Plaintiff and Defendant diſputing about the box. The taller and ſtronger of the two knocked the ſhorter down by a violent blow. The witneſs aſſiſted him to get up; as ſoon as he had aſcended the ſteps, he was knocked down a ſecond time with the ſame force; he fell againſt the witneſs. Mr. Humphries ſaid, it was very harſh treatment; aſked him who he was, and deſired him to give his addreſs. The witneſs was aſked for a pencil, but he had none. Lord Camelford would not give his addreſs, and was walking off, when Mr. Humphries called him a ſcoundrel; upon which the other came up, and beat him over the face in a very violent manner. The witneſs never knew either of the parties before, but was induced to wait upon and communicate with Mr. Humphries, in conſequence of thinking him extremely ill uſed, and being adviſed by his own father and friends to come forward.

Mr. Burlaſe, a ſurgeon, ſaid, he had attended Mr. Humphries in conſequence of the violence which had been offered him. His face was very much bruiſed; he was much disfigured, cut over the eyebrow, and appeared to have received a very violent blow on the lower part of the orb of his eye. He was very unwell in conſequence of it, and ſomewhat feveriſh; he attended him ten days.

DEFENCE.

Mr. Erſkine began by ſaying, he was counſel for the noble lord, who had been brought before the court by Mr. Humphries, to anſwer for an aſſault. The latter Gentleman had inſtructed his counſel to ſtate that no apology had been offered by Lord Camelford; his learned friend, he obſerved, had particularly uſed that expreſſion, becauſe he knew he could not with propriety have ſaid there had been no propoſition for a reference—had he been ſo inſtructed, his inſtructions would have been falſe, as Lord Camelford had been uniformly deſirous of referring the diſpute to that private tribunal, which certainly would have been much better calculated to have ſettled it than a court of juſtice. As far as related to referring the cauſe, there had been no overtures which Lord Camelford had not been deſirous of making; but certainly his lordſhip, with that ſpirit which became him, and was fitting for him to poſſeſs, and which no gentleman and Nobleman, capable of having received an injury, ought to diveſt himſelf of, would not ſubmit to acknowledge himſelf in the wrong. To a reference by which both parties might have been examined on their oaths, he had been ever extremely ready to agree. In the ſhape in which the queſtion was now brought forward it was impoſſible for the jury to diſcover who was the provoker of the quarrel. The Plaintiff, by abandoning his indictment, in which he would have appeared as proſecutor, deprived the defendant's counſel of the opportunity of croſs-examining him. Although he had had a bill found upon his own evidence, yet he dared not to follow it up, conſcious that it would be more to his advantage to have his ſtory told by his counſel than by himſelf, ſubject to a croſs-examination in open court. His learned friend had finiſhed his addreſs by remarking, that no rank or ſtation placed any man in this country above the law.—If this had ever been a queſtionable propoſition in this country, either now or at any former period of its hiſtory; if

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at any time it had occurred to any one to diſpute the propoſition, this would have been an important cauſe indeed. If the noble lord, in the courſe of the trial, had attempted to ſet himſelf above the law, or had endeavoured to have ſhewn himſelf poſſeſſed of any privilege that placed him beyond the coercion of a tribunal of juſtice, in ſuch caſe the jury would by their verdict juſtly teach him that equality, the only true equality, conſiſted in making all men, of every deſcription, amenable to juſtice. The Jury had not the beginning of the affray. The fact was, theſe gentlemen were ſtanding up, both looking into the boxes, and a diſpute aroſe, but which was in the wrong there was no evidence to prove.—Mr. Erſkine ſeemed chiefly to rely upon the argument that the Plaintiff, after receiving the firſt blows, ought to have appealed to the by-ſtanders, inſtead of provoking the Defendant by the expreſſion he had uſed. The only blows which had produced any injury to the Plaintiff were ſubſequent to that provocation. He obſerved there were only two ways of obtaining ſatisfaction for an injury: the one by appealing to the laws of honour, and the other to a jury: and if a perſon intended the latter, it was his duty to appear before that jury himſelf free from blame, and making his injury the foundation of his claim. In this caſe it was to be obſerved, that the two firſt blows were all the plaintiff had a right to complain of, and they were not attended with conſequences that entitled the plaintiff to ſerious damages.

Lord Kenyon obſerved, that the anxiety and eloquence diſplayed by the learned counſel in making an apology for the Defendant, only tended the more to ſatisfy his mind how imperfect that apology was. There was one obſervation made by him, which he could not paſs over unnoticed. He had told the jury there were two ways of redreſſing an injury: one as a gentleman, by an appeal to the laws of honour, and the other by an appeal to the laws of the country. It was therefore for the jury to decide, whether the Plaintiff had made a proper choice; and he ſincerely hoped the jury would by their verdict convince the world, that when perſons were inſulted, and made their appeal to a court of juſtice, and the laws of their country, ſuch appeal ſhould not be made ineffectually.

The

The Jury retired a very ſhort time, and returned with a verdict for the Plaintiff—Damages FIVE HUNDRED POUNDS.

Mr. Gibbs requeſted his Lordſhip to certify.

Lord Kenyon ſaid, he certainly would. He highly approved of the verdict. Young men of high rank and haſty tempers, he ſaid, ought to have ſuch a leſſon read to them.

COURT OF KING's BENCH.

Tooke v. Wright.

Mr. Erſkine on a former day, having, on the part of Mr. John Horne Tooke, obtained a Rule to ſhew cauſe why a criminal information ſhould not be filed againſt Mr. Wright, a bookſeller in Piccadilly, for publiſhing the laſt Secret Report of the Houſe of Commons. Cauſe was this day ſhewn againſt the Rule. The Counſel for Mr. Wright ſaid, this was certainly an application of the very firſt impreſſion. He had an affidavit from Mr. Wright, ſtating, that what he had publiſhed, and which was now complained of as a libel on Mr. Tooke's character, was a literal tranſcript of a Report of the Houſe of Commons, on the moſt important ſubject ever ſubmitted to the inquiry and inveſtigation of the Grand Inqueſt of the nation. When the counſel was proceeding, *Lord Kenyon* interfered, and aſked him, whether this was, or was not, a copy of the Report of the Houſe of Commons?

The Counſel replied, that it was ſworn to be a tranſcript, word for word, and letter for letter, of the Report printed by the authority of that Houſe, by its own printer, and publiſhed by the Defendant, as he ſwore with no view to calumniate the character of Mr. John Horne Tooke, or of any other perſon whatever.

Lord Kenyon.—I think it is not to be endured that a matter of this kind ſhould be diſcuſſed. This is a proceeding of the Houſe of Commons, and communicated by them to the other Houſe of Parliament.

Mr. Erſkine informed the court, that he felt he had a ſtrong caſe on the part of the proſecution.

Lord Kenyon—Will you permit me to ſay, that I would rather that you ſhould think of it.

The Learned Counſel replied that he had already thought of it as much as a man could do.

Lord

Lord Kenyon.—Then you will go on.

The Counſel for the Defendant wiſhed to obſerve, before Mr. Erſkine proceeded in ſupport of his Rule, that Mr. John Horne Tooke had not choſen to deny two out of three charges, which were ſtated againſt him in the Report.

Mr. Erſkine then proceeded in ſupport of his Rule with ſuch abilities and eloquence as were to be expected of him, ſtanding rather upon ſlippery ground. After removing the prejudices that adhered to this caſe, and after aſſuring their Lordſhips, in the moſt ſolemn manner, that he meant to caſt no reflections whatever upon the Houſe of Commons, of which he was a member, but merely to vindicate the character and honour of a gentleman who he thought had great reaſon to complain, he ſaid there were four queſtions which he would humbly bring under the conſideration of the court, and which he wiſhed to treat ſeriouſly and methodically. The firſt queſtion was, whether the matter publiſhed, ſuppoſing the publication ſanctioned by no legal authority, is, in the eye of the law, a libel on Mr. Tooke. 2dly, Whether it be ſuch a libel, that if the party applying to the court for its extraordinary interpoſition, duly traverſes the import of the ſlander, the court is bound by the rules which have always guided their diſcretion in theſe caſes, to grant a criminal information. If theſe two queſtions were decided in his favour, and he could not conceive how they ſhould not, then a third queſtion would ariſe—Whether the Houſe of Commons poſſeſſes any legal authority to direct or ſanction the publication of matter, amounting to a libel on any individual, beyond an entry on its own journals. And 4thly, which was the material queſtion for their Lordſhips' conſideration that day, and which he believed it would be impoſſible for his learned friend to anſwer, Whether, ſuppoſing ſuch extraordinary powers to exiſt in the Houſe of Commons, but that in this preſent inſtance it was not exerciſed by it, the houſe having only directed the Printer of its own Journals to print off as many copies of it as were ſufficient for the members of the houſe as the foundation moſt undoubtedly of a Parliamentary proceeding—as the foundation of an Act of Parliament—whether thereby a right veſted in any individual to publiſh any number of copies of that report without even a command or ſanc-

tion of the houſe. The Learned Counſel argued each of theſe queſtions in their order, and cited a number of caſes in ſupport of his argument; and among others Aſhby and White, Lake and King—the King *v.* Bailey and Waterfield, and the Biſhop of Chicheſter. Mr. Erſkine admitted in his argument that the Houſe of Commons had a right to enter on its own Journals whatever they pleaſed, and alſo to print as many copies of any report or proceeding as were ſufficient for the uſe of its own members; and he even admitted that the houſe was not liable for its own errors and miſtakes. But he contended that no perſon in the ſituation of the defendant had a right, without any general or ſpecial *imprimatur* from that Houſe, to avail himſelf of their privileges, and to publiſh any thing injurious to the character of any individual without, being liable as in any other caſe, to be proſecuted for a libel. He contended farther, that the Houſe could not have given this Defendant that *imprimatur* to publiſh the Report in queſtion.

Mr. Warren ſpoke with great eloquence on the ſame ſide. He ſtated the libel, which was in theſe words:—That the evidence ſhewed beyond the poſſibility of doubt, that the views of theſe perſons (of whom Mr. Tooke was one) were in their nature completely hoſtile to the exiſting government, and Conſtitution of the kingdom, and went directly to the ſubverſion of every eſtabliſhed and legitimate authority." When this evidence was produced at the Old-Bailey, the Jury found by their verdict that it did not ſhew that the views of theſe perſons were completely hoſtile to the exiſting Government, &c. and therefore the Committee had negatived the finding of the jury, which he contended no power in this country had a right to do. The Learned Counſel went a ſtep beyond Mr. Erſkine, and contended that the Committee itſelf had no right to make ſuch a Report. No man could alledge one crime as a defence for another. The Defendant ſaid this was a Report of the Houſe of Commons. So much the worſe, becauſe the Houſe might have brought him to their Bar in the cuſtody of the Serjeant at Arms for a breach of their privileges, and therefore that could not avail him. It was clear, that the matter contained in the Report was a groſs and ſcandalous libel on the character of Mr. Tooke, who would receive that equal and impartial juſtice which the court adminiſtered in all other caſes.

Lord

Lord Kenyon desired Mr. Wright's affidavit to be read. There was no necessity to hear counsel against the rule.

Lord Kenyon—"When this motion was made I did take the liberty to suggest to the Learned Counsel who made it, that if it was what it professed to be—A copy of the Report of the House of Commons—it would be most extremely wrong in the court to grant a Rule to shew cause; and on its not being apprehended that it was a copy of that Report, and on a kind of suggestion that it had assumed a title that did not belong to it, the court granted a Rule, otherwise they would have been in an extremely blameable situation if they had granted the Rule to show cause. It has been said by the Learned Counsel, that there is no intention to cast reflections on the House of Commons. He took that for his ground, and it became him so to do. Whether any thing was infused into him by his client, or what else led him to depart from that, I do not know. But I should be wanting in that duty which I owe to the public, if I were to suffer some words to pass without reprehension. He tells us broadly, that there is no degree of credit due to this Report. I concur with him in what he said afterwards, namely, That if the facts stated in this Report were necessary to be proved, this Report would not only not prove them, but it could not be admitted in evidence, and that for this very reason (the world not casting any slur, or entertaining any suspicion of the House of Commons) it could not be brought in evidence because it was not taken upon oath, and being an *ex parte* enquiry, the party had no opportunity of making a cross-examination. I remember, in another prosecution, to have heard it insisted on, that such things might be given in evidence. Some enthusiasts for liberty, and particularly Mr. Burke, in the Great Hall below, insisted that things taken God knows how were evidence against Mr. Hastings. I took the liberty to put him in mind they were not upon oath. He said they were upon oath, but *ex parte*, and he was left single in his opinion that they ought to be received in evidence. I am sorry for another thing that was expressed, That a greater degree of scandal could not be written against any body than was contained in this Report. I cannot subscribe to that. The application here made to the court is, to file a Criminal information against this person for a libel, and those who make the application

application muſt take that for their ground. The Report in queſtion was made by one branch of the legiſlature, in order to guide them warily, cautiouſly, and with more circumſpection, probably, in introducing ſome laws for the better government of the country; and therefore this was done by a Secret Committee, was brought before the Houſe, approved of by them, and ſent to the other Houſe of Parliament, and is now *ſub judice* in that Houſe. And it is now deſired that we ſhould pronounce this to be a libel. It is a thing not to be talked of or argued. No man living honeſtly and fairly can think it is a libel. No man living can take it to be ſo. In all governments the good and the bad muſt be taken together. I hope in this country there is a great preponderancy of the good. But it is impoſſible, under any government, not to find men of ſuch venomous minds—The Learned Counſel has argued this caſe with a temper and moderation which I extremely approve of. Is it to be argued that a Report of the Houſe of Commons is a libel? And yet that is the ground of the preſent application to the Court. The caſes that have been cited were decided in the very worſt of times, when innocent people without number, I believe, were put to death. Theſe deciſions took place when there was a ferment in the nation, and the people laid plots, and cut one another's throats, under the forms of law. The caſe of Sir William Williams differed from this. The paper containing the libel was the paper of a private individual. What is this Report? Mr. Erſkine very truly ſaid it took its riſe in the Houſe of Commons. I will not ſay there is no caſe where this court will look at the privileges of parliament. Suppoſe the Houſe of Commons were to ſend the Serjeant at Arms to take up a counſel in the act of pleading a cauſe, or ſuppoſe the Houſe of Commons were to grant an injunction to ſtop a cauſe in this court, I ſhould pay no attention to them. Does nobody recollect the proceeding when Sir John Phillips and Mr. Beckford came into this court in their bar-gowns and wigs, which they had laid aſide for near forty years, and moved for a Habeas Corpus to bring up Mr. Murray. This gentleman, by order of the Houſe of Commons, had been taken into cuſtody by the Serjeant at Arms, having incurred their diſpleaſure on account of his miſconduct at the election for Weſtminſter in 1750. The Court ſent the Counſel

and

and their Habeas Corpus about their buſineſs. I am ſure I ſhall not be miſrepreſented in any quarter whatever, when I declare, that I will not ſay caſes may not poſſibly occur where this court may ſee whether the Houſes of Parliament have tranſgreſſed their privileges. I do not impute it to the Counſel that they meant to caſt any reflections on the Houſe of Commons. But no man, I think, can be ſo blind as not to ſee that the perſon with whom this motion originated would laugh at one, if he were to ſay this motion was not meant by him to caſt reflections on the Houſe of Commons, if this Court ſhould grant an information. It is abominable. The attempt is moſt wicked, miſchievous, and malignant; and, therefore I am very clear this Rule ought to be diſcharged."

Mr. Juſtice Groſe and *Mr. Juſtice Lawrence* were of the ſame opinion.—*Rule diſcharged.*

COURT OF KING's BENCH.

DUKE OF RICHMOND *v.* LECHMERE.

Mr. Erſkine ſaid he was counſel for the Duke of Richmond: and unleſs the matter was explained to the jury, it would ſurpriſe them that a perſon of his high rank and great fortune ſhould aſk damages, eſpecially when the amount was trifling: but he verily believed that what the noble Duke ſtated in the inſtructions in this caſe was the truth, and he ſtated the caſe under that impreſſion; that the noble Duke did not come into Court becauſe of the damage which had been done to his property, which damage did not amount to 40s. perhaps, but becauſe the Defendant had withdrawn himſelf from a reſponſibility that attached to him, upon a principle which the Duke of Richmond could not accede to, without ſubjecting his property to immenſe loſs. The Defendant was the owner of ſome craft upon the river Thames, and he had ſuffered a barge of his to break looſe, and in conſequence of which an injury was done to the property of the noble Duke. The Defendant ſeemed to ſay he could defend himſelf by the cuſtom of the river Thames; by which he muſt maintain, that any one may let his veſſel go adrift, at any time, as the impetuoſity of the water might carry it, and if it broke down any wall or palliſado on the bank of the river, by the cuſtom of the river, the owner of the veſſel was not anſwerable; and of courſe

the owner of the property that was injured was to receive no compenſation. This was the prepoſteroas length to which the defence, in this action, muſt be carried before it could ſucceed.—The Duke of Richmond had a houſe in Privy Gardens, to which there was a ground, as there was to all other houſes in thoſe gardens, extending to the edge of the river, on which there were iron bars, or palliſadoes. The Defendant's barge was found looſe upon the river, without any perſon on board to take care of it. In this condition it was driven, by the violence of the wind and water, againſt the rails or palliſadoes of the garden of the noble Duke, which extended to the river. This was natural enough, for there was a ſtrong tide in the river, which would drive veſſels very furiouſly, unleſs care was taken of them. If the Duke acceded to this, much damage might be done to his property hereafter; to protect which, this action was brought. The defence, upon the ſuppoſed cuſtom of the river, was too ridiculous to bear a moment's conſideration.

Foſter M'Riley, one of the centinels of the gardens of the Duke, proved that the injury was done on the 8th of April, 1796, by a barge with nobody in it; he called for aſſiſtance to move it off the ſide of the wall, the coping of which was injured by the barge ſtriking againſt it.—The barge was called the Mary, number 128.

On his croſs-examination by Mr. Gibbs, he ſaid, he belonged to the Train of Artillery. That this barge run againſt the palliſadoes that belonged to the wall, that belonged to the garden, that belonged to the ruins of a building that was once the dwelling houſe of the Duke of Richmond.—He was no judge of the amount of the damages.—He could not tell how many ſtones or bricks were removed from the wall by this accident. Six bars of the palliſadoes were broken, not bent, for they were of caſt iron.

Mr. Gibbs ſaid, that poſſibly there might have been a chaldron of coals in this barge.

William Tell, clerk of the works to the Duke of Richmond, ſaid that this wall and palliſado were the property of his Grace the Duke of Richmond. He ſaid that he ſaw the defendant after the injury was done to the wall. The defendant neither ſaid that he would pay for the damages, or that he would not. He aſked what had been done, and when he was told of it, he ſaid he would examine what was the regular courſe of the river.

Lord

Lord Kenyon ſaid, that the regular coûrſe of the river was, that one man ſhould take care that he did not by any thing belonging to him injure the property of another. There was no uſage for a boat to be let looſe to go up and down the river, and nobody to take care of it.

The witneſs then ſaid, he informed Mr. Lechmere at that time, that a guinea would pay the expence of repairing the damage. He did not ſay he would not pay for it, nor did he ſay he would; but he never did pay for it.

On his croſs-examination by Mr. Gibbs, he ſaid, that the expence of repairing the damage would amount to between twenty ſhillings and a guinea. He was confident it could not be repaired for leſs than twenty ſhillings. He would not, however, be ſure that the Duke might not have driven a bargain with ſomebody to do it for nineteen ſhillings.—The witneſs had this converſation with Mr. Lechmere, the Defendant, and he might ſay, that this barge was driven by violence of weather from her moorings, and not from any negligence of his or of any perſon belonging to him. The witneſs put it to the Defendant to repair this himſelf.

Mr. Gibbs, on the part of the defendant, ſaid, that this was an action brought by the moſt noble the Duke of Richmond and Lenox in this Kingdom, and of D'Aubigny in France, of the laſt title he was not ſure; but he mentioned this to the honour of the noble Duke, and the higher his honour was, the better aſſurance the jury had againſt this action being founded upon any meanneſs. When ſuch a perſon brought his action, to ſeek compenſation for damages ſuſtained by him, the jury would willingly learn the ſort of damage that was ſuſtained. It was an injury done to part of an old garden wall, that belonged to a houſe which the Duke once occupied, but which was now a heap of ruins. Now, upon the amount of the damages done to this noble wall, there was ſome difficulty, for the witneſs ſaid, that although he himſelf could not get any body to repair it for leſs than twenty ſhillings, yet he was not ſure that the Duke might not be able to drive ſuch a bargain with ſome perſon or other, as to get it done for nineteen ſhillings. But, in truth, this was an unworthy attempt to fix a charge on Mr. Lechmere, for it was a thing that happened by mere and unavoidable accident. There was no negligence or careleſsneſs on the Defendant's part in this caſe; and that appeared from the

the evidence of Mr. Tell, upon the declaration of Mr. Lechmere himſelf. This declaration of the Defendant himſelf he could not have made evidence in his own favour, if his learned friend had not made it ſo by aſking for that converſation between the Defendant and the witneſs. That converſation, had it turned out to be againſt the Defendant, would have been, every word of it, evidence; now, on the other ſide, he contended it was evidence in his favour, and his learned Friend having aſked for part of it, in order to fix the Defendant as proprietor of the barge, was bound to take the whole of that converſation: That evidence proved the damage was not owing to the negligence or careleſſneſs of the Defendant, but that the veſſel was driven from her moorings by the violence of a tempeſt. This totally negatived the Plaintiff's declaration, which ſtated that the injury was done by the negligence and careleſſneſs of the Defendant. He could not have made this declaration evidence for his client, but his learned friend could, and he had done ſo, by examining the witneſs as to the converſation between him and the Defendant.

The noble Duke had, upon many occaſions, ſhewn a ſtrong attachment to all the rights of the ſubjects of the King, and had never been remiſs with regard to his own. He did not give way to any claims that were made upon him, however juſtly, until they were fully eſtabliſhed by the rules of law. The noble Duke, in caſes of claims made upon him, ſhewed his attachment to the ancient principles of our conſtitution, which require full proof of demands before they are allowed, and which do not give way to popular prejudices. He knew an inſtance of this firmneſs in the noble Duke in a caſe in which he was counſel for a poor man who had a veſſel of the value of 200l. run down by a pleaſure-boat (or a coal barge, he forgot which) belonging to the noble Duke. This poor man brought his action againſt the Duke of Richmond for the value of this veſſel. The Duke defended the action, and Mr. Gibbs ſaid, he never had ſo much difficulty in his life in any caſe as he had in this: at laſt, however, the noble Duke was compelled to pay the poor man his 200l. He took it for granted, the noble Duke ſuppoſed himſelf in the right when he defended that action. Why then, he had no ground of complaint againſt the preſent Defendant for defending this. The Duke

took

took upon himſelf by his declaration, to prove that this ſerious damage, of the value of nineteen or twenty ſhillings to his old wall, 'was done by the negligence, or careleſſneſs, or impropriety of the Defendant's conduct." The declaration ſtated, 'that the defendant careleſsly, negligently, and improperly drove his veſſel againſt the Plaintiff's wall.' This he undertook to make out by a converſation with the defendant himſelf, which converſation was made evidence by the plaintiff's counſel. To this declaration the defendant pleaded, 'that he was not guilty.' Now, by this converſation, it appeared that the veſſel was driven by the tempeſt againſt this wall, and not by any negligence or careleſſneſs of his, ſo that the defendent was entitled to a verdict upon this evidence. The jury ſaw what this action was. It was for nineteen or twenty ſhillings to the Duke of Richmond from Mr. Lechmere, for that he, by his negligence, or careleſſneſs, or improper conduct, let his veſſel drive againſt the wall of the Duke. There was no proof of any negligence, or careleſſneſs, or impropriety of conduct againſt the defendant. On the contrary, the only witneſs called to prove the Duke's caſe, proved that the veſſel was driven from the moorings by the tempeſt. He was ſure the jury would be glad to find a verdict for the defendant in this caſe upon the evidence.

Lord Kenyon ſaid, that high and low, rich and poor, when they came into a court of juſtice, had equal claims to the adminiſtration of it by a jury.—His Lordſhip obſerved that certain aſperity had been uſed againſt the noble Duke, who was the Plaintiff in this cauſe, which the occaſion did not call for. The learned counſel had made himſelf a witneſs as well as an advocate upon this occaſion, which was hardly regular. The Jury knew nothing but the caſe that was before them, and upon that there was no doubt upon earth but it was made out for the Plaintiff. His Lordſhip had no conception of the law which made the Defendant's declaration, that he was not careleſs in this caſe, evidence to entitle him to a verdict. He took the point to be clear as the ſun.—The Plaintiff had proved the damage, and the ſmallneſs of the ſum was nothing to the queſtion: the Duke of Richmond had the ſame right as any other ſubject to the due adminiſtration of the law of this land. If he gave the jury any miſdirection in this caſe, he was unfit to ſit on the

Bench, and he could not too ſoon be admoniſhed to retire by the deciſion of the Court. He therefore wiſhed Mr. Gibbs to move for a new trial on the ground of his giving the Jury a miſdirection in point of law.

Verdict for the Plaintiff—*Damages Twenty Shillings.*

Mr. Gibbs ſaid, that after this declaration of his Lordſhip, he ſhould not think of moving for a new trial.

RECOVERY OF PENALTIES.

IF a perſon ſubject to the payment of exciſe duties, who is in arrear for the ſingle duties, becomes a bankrupt, and is convicted after the aſſignment of his effects, the double duties are a lien upon the exciſeable commodities, utenſils, and materials, in the hands of his aſſignees, and the commiſſioners or magiſtrates may authorize the penalty to levied upon all ſuch commodities, and all the materials, preparations, utenſils, and veſſels for making thereof, "in the cuſtody of the bankrupt, or any perſon or perſons in truſt for him;' for by Lord Mansfield, Ch. J. the aſſignees do by privity ſtand in the place of the bankrupt; they are his repreſentatives, every equity that would affect him, they are liable to; if he has pledged, they muſt redeem, and there cannot be a queſtion, but, that as to this ſort of lien, the aſſignees and the bankrupt are the ſame; it has been repeatedly ſo determined.—*Stracy* v. *Hulſe. Tr. Ter.* 20 *Geo. III.* 2 *Doug. Rep.* 411.

But if the warrant be iſſued to levy the penalty *on the goods of the bankrupt generally*, it will be bad, and cannot juſtify the ſeizure of goods in the hands of the aſſignees. For in the caſe of *Auſtin* v. *Whitehead and others. Mic. Ter.* 36 *Geo. III.* where the exciſe officers had ſeized goods in the hands of aſſignees, by virtue of a warrant directed to them, authorizing them to levy the penalty "*on the goods and chattels*" of the bankrupt generally, this being after the party had been declared bankrupt, and after the commiſſioners had executed a proviſional aſſignment of his eſtate, *it was held* by the court, that the proceedings by the exciſe officers could not be juſtified, inaſmuch as the warrant directed the ſeizure to be made of the goods of the bankrupt when it was clear that at the time of the ſeizure, the goods taken were not the goods of the bankrupt, but were diveſted out of him by the bankruptcy, and the proviſional aſſignment made under it. 6 *Durn. & Eaſt.* 438.

COMMITMENT.

A Commitment in execution by a magiſtrate, muſt ſtate that the party has been convicted, otherwiſe he will be entitled to be diſcharged out of cuſtody, on being brought into court by habeas corpus. For in the caſe of the *K.* v. *Cooper*, *Hil. Ter. 36 Geo. III.* where the defendant had been committed to priſon by a warrant ſigned by a magiſtrate in theſe words: "Receive into your cuſtody the body of *J. C.* brought before me *W. H.* &c. *charged* before me the ſaid juſtice, on the oath of W. B. maltſter, for running away before the expiration of the ſeaſon for which he was hired, contrary to his contract, as well as againſt the ſtatute in that caſe made and provided; and him ſafely keep in your cuſtody for one month, &c." it was moved that he might be diſcharged out of cuſtody, becauſe the warrant of commitment merely ſtated that he was *charged* with the offence, without adding that he had been *convicted*; and The Court were clear that the objection was fatal, and ordered the defendant to be diſcharged out of cuſtody, 6 *Durnf.* & *Eaſt.*

COURT OF KING's BENCH.

July 2, 1799.

KING *v.* WALTER.

THIS was an information againſt the Defendant as Proprietor of the Newſpaper called *The Times*, for a Libel upon the late Earl Cowper.

Mr. Law, counſel for the proſecution, opened the caſe to the jury. He ſaid, that the libel in queſtion imputed to the noble earl, that he had loſt a very large ſum of money in gaming, which reduced him to a ſtate of deſpair.

He then proceeded to comment upon the malignant nature of the paragraph, which he ſaid was in every part wholly unfounded. The noble earl had not loſt any money in gaming, which was a vice he held in great deteſtation, and therefore it was impoſſible the conſequences which were inſinuated in the paragraph could have enſued. At the time when this paragraph appeared, the noble earl was extremely ill in the country. He had ſome time before had a fall from his horſe in Hyde Park, by which his breaſt was hurt, and afterwards one of the blood-

blood-veſſels in the lungs were ruptured, which was the occaſion of his death. There was not, therefore, the ſlighteſt foundation for any part of this paragraph; and he had no doubt but that the jury would, without any heſitation, find the Defendant guilty.

The Paragraph was then put in and read.

Mr. Charles Cowper ſaid, he was auditor to the late earl, and had the management of his pecuniary affairs. It was not true that the deceaſed earl had loſt any money at gaming; if he had the witneſs muſt from his ſituation have been acquainted with it. Lord Cowper was not in the leaſt addicted to gaming, but on the contrary always expreſſed his diſapprobation of it.

Sir Walter Farquhar, who attended the noble earl as phyſician, ſaid that the occaſion of his death was the rupture of a blood-veſſel in the lungs.

Mr. Erſkine then addreſſed the Jury on the part of the Defendant, in a ſpeech of conſiderable length. He admitted that though his client reſided in the country, and did not interfere in the management of the paper, yet he was reſponſible civilly to any perſon who might be injured by any paragraph contained in the paper, but he contended that he could not be made anſwerable criminally for an act which he not only did not commit, but of which he was not in any degree conuzent. He ſtated alſo, that the Defendant had ſhown every diſpoſition to atone for the paragraph: for when a gentleman who was a friend to Lord Cowper called at the office to deſire it might be contradicted, Mr. Walter, jun. immediately conſented to inſert a paragraph written by that gentleman. He called Mr. Walter, jun. who ſaid, that the Defendant reſided at Teddington, and that he was in the country at the time the paragraph was inſerted, and had not the leaſt knowledge of it.

He ſaid that a gentleman of the name of Brandling called at the office, and deſired to have the paragraph contradicted; that Mr. B. wrote a paragraph contradicting it, which was inſerted.

The printer of the paper was then called, and gave evidence to the ſame effect.

Mr Law then called

Mr. Brandling, who ſaid he did write the paragraph which was inſerted in The Times, contradicting the offenſive one; but that he did not do it in conſequence of any authority

authority from Lord Cowper, or any part of his family, with whom he had not had the leaſt converſation, between the time of his ſeeing the paragraph, and his calling upon Mr. Walter.

Mr. Law addreſſed the Jury in a very able ſpeech in reply.

Lord Kenyon. Gentlemen of the Jury, it has been my habit to ſay ſomething to juries reſpecting caſes of this kind. I am now pretty much wearied of the labour, and I promiſe you I ſhall not take up much of your time. Mr. Walter is not utterly unknown to me, and I certainly have a favourable opinion of him. But that is no anſwer to this complaint; and when juries are engaged in adminiſtering the public juſtice of the country, they are to adminiſter it without entering into the character of the perſon accuſed.

The caſe is before you for your judgement. It is admitted to be a libel, but it is ſaid, though the perſons who publiſhed it are liable, yet Mr. Walter, who has gone into a retired ſituation, and has no longer the conduct and management of the Paper, is not reſponſible. That is neither ſo in precedent, nor is it ſo in convenience. The law of libels has been canvaſſed periodically more than that of any other ſubject, in the laſt century, before Lord Hale, Lord Holt, Mr. Juſtice Powell, &c. and down from the beginning of this century, and one uniform language has been held upon the ſubject. The law was laid down by Mr. Juſtice Groſe on a late occaſion. It was deemed neceſſary to call people's attention to what the law was, becauſe great eloquence had endeavoured to throw cobwebs over it. Is it ſo in other caſes? I was not aware that this line of argument would have been taken, and therefore I did not furniſh myſelf with a bead-roll of caſes. But I remember one caſe, which was decided by a profeſſed advocate for the rights and liberties of men, Sir Michael Foſter. A builder was indicted for a quantity of rubbiſh that had been left in the ſtreet. It was pleaded, that he was not the perſon who had left it there; but as he reaped benefit from the building of the houſe, which had occaſioned this rubbiſh, it was held that he was liable to an indictment. The inſtant it was ſtated, it was delivered from all poſſibility of doubt. The caſe as now argued, is this, unleſs the party indicted is the perſon actually mixing and ſell-

ing the poiſon, he is not anſwerable to the law; ſo that a book may be ſold by a man's wife, by his children, or by his ſervants, and however libellous it may be, he is not anſwerable, if he keeps out of the way, and does not know it. If the argument is to have any weight, it muſt be carried that length. Is this to be the ſituation of the public? *Reſpondat ſuperior* is a maxim that holds in all civil caſes, and up to a certain extent in criminal caſes, as in this inſtance. Every thing that can be ſaid by Mr. Walter will be heard with a willing ear, if you ſhall think he ought to be brought up for judgment. Whether we are to go by the law as it has been handed down to us from our anceſtors, whether we are *ſtare ſuper vias antiquas*—or whether you are to introduce a new order of things, as being better and more for the advantage of the ſtate, is for you to ſay by your verdict. *Guilty.*

DE BEAUFRE AND ANOTHER, *v.* CRICKETT, Eſq.

THIS was an action brought by the two Plaintiffs, *Dec.* 12, 1798, to recover 629l. for their ſkill and labour, in inſpecting and aſcertaining the value of a very large quantity of ſilk that had been libelled in the court of admiralty. The action was brought againſt the Defendant, who is the marſhal of that court, who has two and a half per cent. on the whole amount of this ſilk for doing little or nothing. The Plaintiffs claimed one half per cent. for their ſkill and labour in inſpecting it, and aſcertaining the value. The ſilk amounted to 125,791l. and the perquiſite of the Defendant on this article alone exceeded 3000l.

After the Plaintiffs had made out their caſe, and the Defendant had proceeded a certain length in reſiſting this demand, he thought proper to give it up, and to conſent to the Plaintiffs having a verdict.

Lord Kenyon ſaid, he ſhould do juſtice between theſe parties as if what appeared now conſtituted the whole caſe with regard to the public as well as the parties themſelves. How much worldly wiſdom there was in making the diſcloſure that had been made to day, he ſhould not pretend to decide; but he could not help being ſtruck by what had been ſaid by the learned counſel for the Plaintiffs, that ſometimes out of a conflict between individuals

good

good might ariſe to the public. He prayed God it might be ſo in this caſe; for the office of the Defendant, as Marſhal of the Admiralty, wanted reformation very much. He was not for breaking down all the eſtabliſhed hereditary fees, which were long ago fixed and determined, and which were become the property of certain reſpectable families in this kingdom; whoſe freehold they now are; but where there was no ſuch fixed eſtabliſhment, the caſe was very different, and particularly invited reformation. His Lordſhip ſaid, he had great reſpect for all the branches of juriſprudence of this country, that among the reſt he had much eſteem for the court of admiralty, as being of great importance and utility to the public; and as to the learned perſon who preſided there, every man who knew him muſt have great reſpect for him. Whether it was in his power to reform the moſt enormous grievance proved this day to exiſt in the Defendant's office, as Marſhal of the Admiralty, he could not pretend to ſay. That his inclination would lead him to it his Lordſhip ſaid he was poſitively ſure. In contemplating the ſtate of things as they related to Weſtminſter-hall, his Lordſhip ſaid, he took ſome pride to himſelf that he belonged to that part which he did of the profeſſion, and he reflected with pleaſure on what took place about ſeventy years ago. Evils at that time exiſted in the court of chancery, which it was not in the power of the court to cure, but it was in the power of the court to expoſe them to the view of the public, and to call on the legiſlature to interpoſe its wiſdom and authority to arreſt the evil, and it was done; and at this inſtant many, many millions of money belonging to the ſuitors of the court of chancery were now taken care of, and its affairs were conducted by one officer, called the Accomptant-General, for the ſalary of only 1,500l. a year. If ſomething of this kind could be made applicable to the Admiralty, in the department which had been brought to light that day, it would be of great uſe to the public. He believed, that in the Admiralty a little had been done already; ſome of the buſineſs of which he witneſſed, if he miſtook not, when he attended at the Cockpit. That improvement related to the diſpoſition of prize-money, and he believed the public were indebted to Mr. Dundas for that improvement. He believed that by ſome regulations deviſed by that gentleman, prize-money was brought in with more expedition now than formerly.

formerly. This was something. But much, much still remained to be done, as was manifest from the proceedings of that day, by which it appeared that large sums of money went into the pockets of an officer for doing nothing; and from whom was this money to be taken? Who were the pay-masters of it? The honest, brave, and poor sailor, who toils and bleeds in the service of his country; and who, when he comes on shore, knows of no means whereby to prevent these evils, and is glad to take any thing he can get. Here an officer who did nothing, charged *ad arbitrium*—what he pleased for himself. It was most enormous. As to the issue between these parties, he could not say any thing, because he was stopped by the discretion of the Defendant's counsel submitting to a verdict. If that had not been so, he should have looked at the Record—seen what the Plaintiff's had done, and have desired the jury to say what they deserved to have for the labour they had performed; but that was prevented by the Defendant's counsel consenting to a verdict. Therefore the jury had now only to deduct 253l. 10s. the sum paid into court, out of the Plaintiff's demand, 629l. and to give a verdict for the balance. *Verdict for Plaintiff for* 375l. 10s.

OLD-BAILEY.

Saturday, November 2, 1799.

WILLIAM BARRETT, Robert Marks, William Foster, William Searle, and Thomas Bentham, late seamen on board the Lottery Smuggling Cutter, were tried for a Misdemeanor in firing at some Custom-House officers from a swivel and a musquet, and opposing and obstructing them in the execution of their duty.

Capt. Bray stated, that he commanded the Hind Revenue Cutter: on the 18th of May last, as he was cruizing between Dartmouth and Start Point, he received information that there was a smuggling vessel endeavouring to get towards the land. He immediately went in search of her, and at last saw her within two leagues of land; when she discovered the Hind, she tacked about, and endeavoured to get away. The witness knew her to be the Lottery Smuggler; he chased her all that night. The next morning there was a dead calm, which prevented either

either of the cutters from moving; and then the Lottery was about three leagues from the Lizard, and about five from the Hind. He immediately ordered the boats of his cutter to be manned, and to go and board the ſmuggler, and take poſſeſſion of her. He ſaw his two boats hoiſt the revenue colours; and when they had got about two-thirds of their way, he ſaw a gun fired on board the ſmuggler, which was not a muſquet, but which appeared to be a ſwivel or ſtern chace. The report he did not hear, and he did not know whether the gun was loaded or not. His boats came back at this time without taking the ſmuggler, who, in conſequence of a breeze ſpringing up began to make ſome way. The Hind ſtill purſued her; and in the afternoon came cloſe to, and took her.

H. Pearce ſaid, he was a cuſtom-houſe officer, and mate of the Hind. He was on board one of the boats that was ſent to take poſſeſſion of the Lottery; the boats had the cuſtom-houſe colours hoiſted, ſo as to be eaſily ſeen and diſtinguiſhed; when they approached her ſhe hoiſted Engliſh colours and fired a gun. The people on board her afterwards called out to the boats by a ſpeaking trumpet, to keep off; and if they did not that ſhe would fire and ſink them. The people in the boats ſaid they belonged to the Hind cutter, and that they had orders to come and take the ſmuggling cutter, which they knew to be the Lottery. The others replied, that they did not care a damn who they were, denied their veſſel to be the Lottery, and declared, that if the boats offered to come along-ſide, not a man in them ſhould return alive. The witneſs ſaw a large gun thrown overboard from the ſmuggler; he alſo ſaw two ſwivels on the mizen beam, and a man with a muſquet in his hand. From the threats and ſhew of reſiſtance on board the ſmuggler, he judged it prudent to go back again to the Hind. The ſmuggler was afterwards taken by the Hind; and the preſent five defendants were among thoſe who endeavoured to make their eſcape in a boat.

This evidence was corroborated by that of other perſons belonging to the Hind. When the Lottery was taken poſſeſſion of, her guns were all thrown overboard, but there were ſome wooden guns remaining; theſe were made in the ſhape and painted like real guns, for the purpoſe of intimidation. There were ſeveral caſks of

liquor found on board the ſmuggler. A copy of the record of her condemnation was then produced and read.

Mr. Marriot addreſſed the Jury in behalf of the defendants. He admitted they were on board a veſſel which was carrying on an illicit trade. But he contended that it was neceſſary to ſhow that the priſoners had made reſiſtance; that however was not proved; nor was it clearly proved that the veſſel at the time the reſiſtance was ſaid to have been made, was not beyond the diſtance of four leagues from the ſhore, in which caſe reſiſtance would have been juſtifiable. There was another circumſtance in favour of the defendants, how could they know but this revenue cutter was a French privateer? and was the idea to be held out, that every veſſel diſplaying Engliſh colours (which it was known the enemy's ſhips often did) muſt be inſtantly ſubmitted to?

Mr. Garrow, who conducted the proſecution, replied to the arguments of Mr. Marriott; and contended that it was impoſſible the crew of the Lottery did not know who they were who came to take the veſſel. And as to its being neceſſary to prove that the defendants had made reſiſtance, it was ſufficient to ſhew that they were engaged in the ſame undertaking with others who held out violent threats, and made a violent reſiſtance.

The Learned Judge was of the latter opinion.

The Jury, after retiring for a ſhort time, found all the defendants *Guilty*.

COURT OF KING's BENCH.

November 13, 1799.

Dawes v. Beck.

THIS was an action brought by the Plaintiff againſt the Defendant, who is a common carrier, to recover the value of a quantity of rum and gin, which, it was contended was loſt by his negligence. Theſe goods were conſigned by the Plaintiff, who reſides in London, to a Mr. Ody, who lives at Hill Merton, in Warwickſhire. Mr. Ody, the conſignee, named the conveyance. He ordered them to come by the Welford Waggon, which is the property of the Defendant. They were accordingly put into his waggon, and he carried them to Weſt Haddon,

Haddon, where he left them, without apprizing Mr. Ody, the conſignee. The conſequence was, they remained there till the permit expired, when they were ſeized by the Exciſe officers. There was no evidence in this caſe that there was any agreement or communication between the conſignee and the carrier. It was tried before the Lord Chief Juſtice, who thought the Plaintiff was not entitled to maintain this action, and therefore he was non-ſuited. At the ſame time he was permitted to move the Court to have the nonſuit ſet aſide, if they ſhould think him entitled to a new trial.

Mr. Erſkine and other counſel were heard in this caſe.

The Lord Chief Juſtice, among other things, ſaid, in deciding all caſes, one would wiſh, as far as he could to go on principles that met the feelings of every man; and his Lordſhip conceived nothing met thoſe feelings more than that he who has received an injury ſhould be the perſon to call the other party who had injured him into a court of juſtice, to make him ſatisfaction. See who had received the injury here. The goods were ordered by Ody, who lives in Warwickſhire, and who deſired they might come by a particular conveyance. The goods are ſent agreeably to his orders. There was no doubt, therefore, that although the goods might miſcarry by the way, though the waggon might be burned, Ody, the Conſignee was anſwerable for the price of them. Ody, therefore, had received the injury.—There were two things to conſtitute an action—the *damnum* and the *injuria*. Beyond all doubt the conſignee might maintain this action. Suppoſe the Conſignee were to get this money into his pocket from the Defendant, and the Conſignee were to bring another action againſt him, he would plead the recovery of that money by a ſtranger to him in bar of the ſecond action. And therefore the Carrier would be liable to both, whereas he ought only to be anſwerable to the man whom he had injured; ſo ſaid common ſenſe, and ſo ſaid the law. His Lordſhip was therefore of opinion, that the nonſuit was right, and ought to ſtand.

Mr. Juſtice Groſe ſaid, the queſtion here was, Whether the Plaintiff could maintain this action. He delivered the goods to the Carrier by the orders of Ody. The moment, therefore, after the goods were delivered to the Defendant, Ody was liable to be ſued for them, becauſe, in truth, they were the property of Ody. It was true they

they might be ſeized in a certain event, *in tranſitu*, by the Conſigner. But that was on an equitable principle; and that principle, to uſe the expreſſion, had now grown into law. So that a particular ſort of right, after the property veſted in the Conſignee, remained in the Conſigner. There was no doubt but that this action might be maintained by the Conſignee; and, from the correſpondence that had taken place between the parties, the Plaintiff himſelf conſidered that the property veſted in the Conſignee. That being the caſe, it ſeemed to his Lordſhip that the Plaintiff had no right of action againſt the Defendant, and that the Nonſuit ought to ſtand.

The other Judges were of the ſame opinion.

Rule for a new trial diſcharged.

November 20, 1799.

The King v. Warner.

THIS is a caſe of conſiderable importance to the public. The Defendant, who by buſineſs is a Coal Meter, was appointed an Overſeer of the Poor of the Pariſh in which reſides. He refuſed to ſerve the office, alledging it was incompatible with his buſineſs. He was obliged from the month of September to the month of March in every year to ſuperintend the meaſuring of 12,000 chaldron of coals, and therefore it was impoſſible for him to diſcharge the office of overſeer of the poor. He was, however, indicted, and found guilty, for not accepting the office.

He obtained a Rule to ſhew cauſe why a new trial ſhould not be granted. This caſe, which has ſtood over a conſiderable time, came on to-day to be argued.

Mr. Serjeant Bailey told the Court, that the only conteſt in this caſe now reſpected the coſts, the Defendant having obtained from the Court of Exequer his writ of privilege; the validity of which he admitted.

The Lord Chief Juſtice ſaid, there was then an end of the caſe. That court could never proceed to puniſh a man after the Crown had taken him under its protection.

Mr. Serjeant Bailey conceived that his Clients having obtained a verdict of Guilty againſt the Defendant, had a right to their coſts.

Lord

Lord Kenyon ſaid, they could only have their coſts againſt a guilty perſon. As the exiſtence of the Defendant's privilege had been aſcertained, they muſt grant a new trial, and if the Proſecutors went to a new trial, the Defendant muſt be acquitted. At firſt he doubted reſpecting this caſe extremely. He did not ſee under what branch of the prerogative that privilege was to be given. And though the prerogative was as valuable a part of the Conſtitution as any other, yet his Lordſhip ſaid he was not prepared to ſtretch it beyond its preſent limits. But having looked into the authorities, and particularly into Bunbury's reports, he was now clear that the power of granting this privilege came under the prerogative as it had been long exerciſed. No man ſhould be appointed to two offices that were incompatible with each other.

Mr. Juſtice Groſe ſaid it ſeemed to him that theſe two offices were totally incompatible. His Lordſhip thought it very blameable to appoint ſuch an inhabitant. It appeared there was a ſufficient number of perſons to execute the office excluſively of him. Though he did not mean to ſay that of itſelf was ſufficient, ſtill they were blameable to appoint this man. His Lordſhip ſaid he had heard of other inſtances where the experiment was now making; and therefore he wiſhed to obſerve that it was very fit that men ſhould not be appointed to two incompatible offices. During the laſt circuit, having this buſineſs very much in his mind, he made ſome enquiries reſpecting what had been done on the ſea coaſts, where there were more officers of the cuſtoms than in other parts; and there he found in more inſtances than one that they had been appointed comptrollers of the cuſtoms, and others whoſe daily and hourly attendance was indiſpenſibly neceſſary, and whoſe offices therefore was clearly incompatible with the diſcharge of any other. And therefore if ſuch a practice was perſevered in, the utmoſt inconvenience would enſue to the public.

Mr. Attorney-General, who attended to argue this caſe, had it been neceſſary, on the part of the Crown, pointed out to the Court the loſs that would ariſe particularly to his Majeſty's revenue, if the attention of its officers were to be drawn to other buſineſs in conſequence of ſuch appointments.—*Rule abſolute.*

It was obſerved, that the Attorney-General, if he pleaſed, might enter a *Nolle Proſequi.*

OLD BAILEY.

January 17, 1800.

ELIZABETH JARVIS was indicted for the wilful murder of her baſtard child, by violently wounding and cutting it on the tongue with a knife, or ſome other ſharp inſtrument, and thereby occaſioning her death.

The indictment alſo ſtated, that ſhe ſtrangled the child, by ſqueezing its throat.

She ſtood charged alſo on the Coroner's inquiſition with the wilful murder of the child.

Mr. Knowles opened the caſe for the proſecution.

Mrs. Rebecca Random, the wife of Mr. Random, a printſeller, lately of the Strand, but now of Bond-Street, gave the following evidence:

"When this unfortunate accident took place we lived in the Strand. It was on the 8th of November. The priſoner came into my ſervice as a ſervant of all-work. In the courſe of her ſervice I entertained a ſuſpicion of her being pregnant, and in a very few days I imparted that ſuſpicion to her. I aſked her if ſhe was not with child? She ſaid, No; ſhe was not. I mentioned that matter to her again ſeveral times. Her anſwer was, firſt, that ſhe believed ſhe was going into the dropſy. The ſecond or third time, I do not know which, ſhe ſaid ſhe was ſo ill, that ſhe believed ſhe muſt quit my ſervice. On the 26th of November we had occaſion to remove from the Strand to Bond-ſtreet, where we now live. The priſoner endeavoured to aſſiſt us in moving, but about ſeven in the evening ſhe was ſo ill as to decline her work, and ſhe appeared to me to be very poorly, and while I was down ſtairs ſhe went up to her own room. She ſaid ſhe had a very violent complaint in her bowels—this was about ſeven in the evening; between eight and nine I went to her room, and found her in bed. I aſked her how ſhe was; ſhe told me ſhe was very poorly indeed; ſhe was very ſorry ſhe was obliged to go to bed. I aſked her if ſhe was well enough to ſet up? She ſaid ſhe was not. I aſked her if I could do any thing for her? She ſaid No, ſhe was much obliged to me. I aſked her if I could ſend for any thing for her? She ſaid No. I aſked her if I could mix any thing for her with a drop of water? She ſaid No; but I inſiſted on giving her a drop of rum, and which I gave her, and afterwards ſhe

ſeemed

ſeemed to be in very great pain indeed. I aſked her if I ſhould ſend for a doctor? She ſaid No; and begged I would not. I told her I thought her pains ſeemed to me like labour pains, which once I had felt myſelf; upon which ſhe almoſt ſcolded me, and aſked me how I could ſay ſo, or how that came into my head? I told her, that if it really was, to own the truth, and I would do every thing in my power for her. She then ſeemed to be quite angry that I ſhould think ſuch a thing of her. I was with her about ten minutes or a quarter of an hour, and then left her. I went up to her again between twelve and one; I told her then her maſter deſired that I ſhould ſend for a doctor to know what was the matter with her; ſhe turned round in bed, and told me ſhe was as well as ever ſhe was in her life. I told her I really thought ſhe was in labour; ſhe ſaid No, ſhe was as well then as ever ſhe was in her life, and thanked me for the rum I had given her. I ſtaid with her for nearly the ſame length of time as before. I did not ſee her again till eight or nine in the morning, and then I went up to her. When I went into her room, I obſerved that ſhe was in bed. I aſked her how ſhe did? ſhe ſaid ſhe was a great deal better, and ſaid ſhe hoped ſhe ſhould be better in two or three days. She complained of being very dry. I aſked her if I ſhould make breakfaſt for her, and ſend her up a cup of tea. She ſaid No, ſhe was too dry to wait for it. I went and mixed her a little milk and water, which I thought could do her no harm. When ſhe took the baſon out of my hands, I obſerved her hands were bloody—ſhe had only one arm out of bed, her left arm was under the cloaths. I aſked her what ſhe had been doing? I aſked her whether ſhe had not miſcarried?—She ſaid I was very ſtupid, and it was not the firſt time I had taken ſuch a thing in my head. I told her then ſhe had either miſcarried, or delivered herſelf; but I thought ſhe had not delivered herſelf, but had miſcarried. She aſked me if I could give her ſome linen; I told her I could, and then left her.—When I came up to her again, I heard a noiſe from her bed. I went down again, and brought her up a little jacket; the noiſe appeared to me then to come from the floor, and it was more diſtinct than before. I aſked her, whether ſhe would remain where ſhe was? She ſaid, No, ſhe would get up. I aſked her what noiſe that was? She did not ſeem to give me any anſwer at all. I laced her

ſtays

ſtays for her, and ſhe got out of bed. I told her I would ſee what was making that noiſe in the corner of the room; but ſhe told me to go down. I told her I would not leave the room until I ſaw what was on the floor. She begged me to go down ſtairs, and ſaid that ſhe could do very well by herſelf. I deſired her to move on one ſide, that I might move the bedſtead, and ſee what was by the wall, to which the bedſtead was very near. When ſhe found I was going to move the bedſtead, ſhe jumped over the bed, and ſtood between the bundle of cloaths and the corner, and would not let me paſs to ſee what was there. I aſked her to let me ſee it? She ſaid No, ſhe would not let me ſee it, and pulled it up altogether. I took it into my hand, and inſiſted on taking it away from her. She then gave it me, when I felt ſome warmth, through a cold check apron. I laid the bundle on the floor, and opened it, and in it was a child. A piece of the check apron was in the mouth of the child, ſo that the child had not the leaſt opportunity of breathing. It was completely covered. I took it out, and put it into a flannel coat for warmth. The child was then bleeding very much at the noſe and mouth. I ran to the door, and ſcreamed for help. I ſent for Mr. Whitfield, a medical gentleman in the neighbourhood, in Beaufort Buildings. I aſked her how ſhe could be ſo cruel, and why ſhe did not tell me the overnight of her condition? She ſaid ſhe did not know ſhe was with child. I told her if ſhe had nothing to cloath the child with, I had plenty of things of my own, and I would have given them to her. I told her ſhe had certainly killed her child. She ſaid No, ſhe had never hurt any child in her life. I told her ſhe certainly had, and, if ſhe had not, the child would have lived and done well. The child was ſtill living; but I thought it in a dying ſtate. She told me ſhe had never hurt my child. I ſaid no, ſhe had not, but I was ſorry ſhe had done ſo by her own. I then took the child, and waſhed it with brandy. It lived till about ten o'clock, and then died. I ſaw a ſmall ſcratch on the child's throat. I told her, that if the child ſhould live, ſhe ſhould never ſee it any more.

On croſs-examination, this Lady ſaid, that on the Friday preceding this matter, which happened on the Wedneſday, the priſoner had deſired to go from her ſervice; but was prevailed upon to ſtay by her miſtreſs intreating

her

her to do ſo until ſhe ſhould be provided with another ſervant. The priſoner was very fond indeed of the little child of her miſtreſs that ſhe had the care of. The priſoner alſo ſaid, when it was diſcovered that her child was born, that ſhe had provided baby linen for it at her ſiſter's, which afterwards turned out to be true.

Mr. Robert Whitfield, a ſurgeon in Beaufort-buildings proved, that being ſent for on the 27th of November laſt, he found the child wrapped up. It was very bad and almoſt exhauſted, and appeared to be very cold: he cauſed it to be immerſed in warm water. As ſoon as he had raiſed the head from the floor, he perceived to come from the mouth a conſiderable quantity of blood. He told Mrs. Random, in the preſence of the priſoner, it was his opinion, that the child was dying by the loſs of blood. It was breathing very faintly. He ſaid it was of no uſe for him to make any further effort, for the child was exhauſted by the loſs of blood, and about to expire. Mrs. Random took the child to the next room, and preſently afterwards it died. He did not perceive the injury or violence done to the child until the Coroner's Inqueſt was held upon the body, which was on the 29th of September. He opened the cheek of the child by means of a diſſecting knife, and diſcovered a wound in the tongue. It was on the left of the upper part of the tongue, pretty far back. The injury to the tongue appeared to him to be done at ſeveral times, but by an inſtrument that was not very ſharp. He could not ſay that the wound in the tongue was the cauſe of the death of the child, unleſs he knew how long it had been bleeding before he came to it, for from the time he was ſent for, to the time of the death of the child, the bleeding was not ſufficient to have cauſed the death. There was a conſiderable extravaſation of blood under the chin and about the throat, which certainly muſt have been cauſed by ſome violent preſſure. The child died by the loſs of blood, and that was occaſioned by ſome injury done to it: but he begged leave to obſerve, that through a rude manner of delivering the child, a graſping of the throat might have been the cauſe of the injury to the throat. It was clear from all he ſaw, that the priſoner had had a very hard labour of it, and a very difficult one. But from all the opportunity he had had of making obſervation upon the caſe, it was his opinion that the child died a violent death.

On croſs-examination this gentleman ſaid, he had been in the profeſſion of a ſurgeon and man-midwife for fourteen years, that he had read the works of many celebrated authors upon the ſubject of the delivery of women in labour, and he allowed that upon many points ariſing from that ſubject, there was much uncertainty and difficulty. He thought that ſpirits given to a woman in this condition would rather retard the labour, and when it came, pains would be the more violent. That ſometimes women are deprived of all their faculties in the pangs of labour, and conſequently know nothing of what they do; but he thought a finger put into the mouth of the child, could not have injured the tongue of the child, but muſt have injured the palate of the mouth. He had examined the wound upon the tongue, and found it was of the length of an inch and an half, and of the depth of about a quarter of an inch, and from its jaggedneſs he was of opinion, it was given at different times; it was alſo of an irregular depth. He was, however, of opinion, from all the circumſtances of the caſe, that the child died by wilful violence, for which he aſſigned various reaſons, founded upon much ſpeculation and ingenious conjecture.

Mr. Crowther, a ſurgeon, living in Boſwell-court, gave his opinion alſo upon this caſe: he ſaid he attended the Coroner's Inqueſt. He examined the injury done to the tongue: the wound was acroſs the tongue, and ſeemed to be done at more times than one, becauſe it was irregular in its depth and figure, and which he believed to be done by ſome blunt inſtrument of ſome kind or other. He afterwards, by deſire of the Coroner, went and examined the priſoner's box and pockets, in the room where the child was born, and alſo examined the woman herſelf. He aſked her if ſhe was aware that the child had bled much at the mouth? not informing her he had diſcovered any wound. She anſwered ſhe did not know. In perfect tranquillity of mind ſhe ſurrendered her things, and ſuffered her bed to be examined, as well as her box and pockets, which were opened and examined carefully. He found ſome articles of cloathing, and ſome knives and ſciſſars, but not on one of which was the ſtain of a drop of blood—not a drop of blood on either of them:—they were all found locked up in her box. This was a day or two after the delivery. He was of opinion, that the effuſion of blood occaſioned by the wound would not have endangered

endangered the life of the child, it would certainly have ſtopped of itſelf, becauſe in a little bleeding the veſſels would have retracted. He was of opinion that the death was occaſioned by violence, but he really did *not think it was by wilful violence. He did not believe it proceeded from intentional violence*, becauſe the child's head had ſuffered much compreſſion in the birth. The wound was on the upper ſurface of the tongue, and might have been cauſed by the nail of the mother's finger in her agony.

Mr. Henry Ruff, apothecary, in Stanhope-ſtreet, gave his opinion very modeſtly. He ſaw the child on the Coroner's Inqueſt. He inſpected it, and, from all he ſaw, he was of opinion that *the wound was occaſioned by the nail of the mother, pinching it in her agony*, and that the child's tongue might naturally be out of its mouth, if ſqueezed by the throat, which an unſkilful woman would naturally do in the pains of labour. He conceived it to be a wound occaſioned by the mother's nail. He thought ſo, and ſaid ſo, before the two ſurgeons, on the Coroner's Inqueſt. He was of the ſame opinion at this moment, now that he had heard all the evidence. Being of that opinion, he examined the priſoner's hands, and found that ſhe had remarkably large, long, hard and ſharp nails.

Mrs. Tarling, a reſpectable looking woman, and ſiſter to the priſoner, proved, that the priſoner had long prepared baby linen, and conceived ſhe intended to go away from Mrs. Random's houſe to be delivered.

Mrs. Random ſaid, that the priſoner had certainly deſired to leave her on the preceding Friday, and ſtaid at her deſire, to take care of her child, until ſhe could have another ſervant. No inſtrument of any kind whatever was found in the priſoner's bed, by which this or any miſchief could be done.

Several reſpectable witneſſes gave the priſoner a very good character, for the mildneſs of her temper, and for her tenderneſs to children.

The Chief Baron told the Jury, by way of preparation to the conſideration of this caſe, that in his opinion the queſtions in the application of this evidence were theſe—

Firſt, Whether any wound whatever was given, and if given, was given by the priſoner to the child's tongue;

Secondly, Whether that wound, if given by the priſoner, might have been the cauſe of the child's death?

Thirdly,

Thirdly, Whether, in point of fact, it did cauſe the child's death?

And then another queſtion (but upon which there was little difficulty, but he would ſtate it becauſe it was a charge in the indictment), Whether the priſoner wilfully choaked and ſtrangled the child by ſqueezing its throat?

The learned *Chief Juſtice* then ſummed up the whole evidence, made many excellent obſervations upon the material points in the caſe, obſerving that if there was any doubt in the caſe, the priſoner, from the conſtant practice in Courts of Juſtice, was entitled to have the benefit of that doubt.

The Jury retired, and having remained out of Court for about half an hour, brought in their verdict—*Not Guilty.*

Ann Perry was indicted for the murder of her baſtard child by throwing it down the privy.

There was no evidence but the priſoner's own confeſſion, and that amounted only to this, that ſhe delivered herſelf of a child ſtill born, and that ſhe kept it a good while to be ſure it had no life, and then threw it down the privy.

The Learned Judge was clearly of opinion there was an end of this charge. If the proſecutors chuſed to rely on the priſoner's confeſſion, they muſt take the whole of it, unleſs they could contradict it. Here it appeared the child was ſtill born; that made an end of the caſe.—*Not Guilty.*

COURT OF KING's BENCH.

Jan. 24, 1800.

Bird v. Seddon.

THIS is one of ſeveral caſes of inſurance on the ſhip Confederacy, which ſailed from London, and having touched at Bombay and the Prince of Wales's Iſland, there took in a cargo, and proceeded to Canton, in China, where having purchaſed, with the produce of the cargo ſo taken in, another cargo proceeded to Hamburgh, and was taken in the way. The queſtion was, whether this was to be conſidered one entire voyage, or whether the voyage from Canton to Hamburgh was a new adventure?

The

The cauſe having been tried at Guildhall in the Sittings after laſt Term, the Jury found a verdict for the plaintiff; and ſtated, that the outward-bound voyage was for Canton, in China, with leave to touch, ſtay, and trade at Bombay, and all ports and places beyond the Cape; and that from Canton to Hamburgh was a diſtinct and ſeparate voyage.

The Counſel for the defendant contended that this verdict was altogether contrary to evidence, and to the ſolemn direction of Lord Kenyon, who tried the cauſe; and moved for a rule to ſhew cauſe why the effect of it ſhould not be ſuſpended until the trial of two other of the cauſes upon the ſame queſtion.—Granted.

In the courſe of the buſineſs, Lord Kenyon took occaſion to obſerve, that the practice which in Special Jury cauſes has crept in, of the party applying for the Special Jury, himſelf employing an officer to ſummon the Jury, is highly improper; any perſon other than the Sheriff interfering in ſuch ſummons being illegal, and ſufficient to vitiate the poll.

The King v. Thompson.

February 27, 1800.

THIS was an information filed by His Majeſty's Attorney General againſt the Defendant James Thompſon, for having committed Perjury before Dr. Lawrence, Surrogate of the Court of the Archbiſhop of Canterbury, in having taken an oath that one Maria Withers was of the age of twenty-one years, for the purpoſe of obtaining a licence to marry the ſaid Maria Withers to the ſaid James Thompſon, well knowing the ſaid Maria Withers to be an infant of the age of about 14 years, and under the guardianſhip of her mother, Sophia Withers; which licence by theſe means he obtained, and by virtue of which he cauſed a marriage to be ſolemnized between him and the ſaid Maria Withers, with intent to defraud her of her fortune, &c.

The Attorney-General opened the caſe nearly as follows: —" Gentlemen of the Jury, this is an information which in the diſcharge of what I feel to be my duty, and in purſuance of a recommendation conveyed to me from the

Court of Chancery, I have brought before you, a Jury of the country, to determine a queſtion on the conduct of James Thompſon, the Defendant, who ſtands charged with having done an act, which I conceive to call for the animadverſion of a Court of Juſtice, and to be of great moment, as being one of thoſe caſes in the event of which the whole intereſt of the domeſtic part of human life is concerned—I mean the ſolemnization of marriage. The information charges the Defendant, James Thompſon, with having, for the purpoſe of poſſeſſing himſelf of the greater part of the fortune of an unfortunate young lady of the name of Maria Withers, and of procuring a marriage between him and her, in fact, but which in point of law, would have been null and void, made a falſe oath to procure a licence, by which he impoſed on thoſe whoſe duty it is, in proper caſes to grant licences for marriage. The Defendant made an affidavit, purporting that Maria Withers was of the age of 21 years; he knowing that ſhe was at that time only of the age of 14.—Having obtained, by theſe means, a licence for marriage, there was afterwards in fact a marriage ſolemnized between the Defendant and Maria Withers. The ſituation of the young lady was this:—She was the daughter of a gentleman who formerly, as I believe, had been in the navy; one of her brothers is in that ſervice now. She had an uncle, a brother of her father's, who changed his name into Baker: this gentleman left to each of his nephews, who are four in number, and to this young lady, a thouſand pounds, alſo a further ſum of 1000l. to be divided among his nephews and niece, as his executors ſhould think fit: this young lady had therefore a certain ſum of 1000l. and alſo the probable ſhare, that is, a fifth, of 1000l. more. She was under the care of her mother. A ſuit was inſtituted in the Court of Chancery for the purpoſe of adjuſting the diſpoſition of the property of the late Mr. Baker, the uncle of this young lady, according to the direction of his will; and although this young lady was no original party to that ſuit, yet as ſhe was beneficially intereſted in the diſpoſition of the property bequeathed by it, the Court of Chancery, in the ordinary exerciſe of its juriſdiction, made an order referring it to the Maſter to ſee and to report to the Court, who was the proper perſon to be the guardian of Maria Withers. The Maſter accordingly examined the matter,

as directed by the Court; he approved of her mother for that purpoſe, he reported accordingly, and that was confirmed by the Court.—She was therefore under the care and guardianſhip of her mother, not only by that right which a mother has over her infant children, unleſs deprived of it by law, but ſhe was under her mother's care under the authority of the Court of Chancery, an authority which that Court has the power and the will to grant to thoſe who apply to it for its protection.

The family of which this lady is a part, had principally reſided in Ireland. They came over to this country about two years ago. The mother and daughter and one of the ſons happened to take lodgings in the houſe of the Defendant, who is a Baker in Church-row, Pancras. It was not a month after they were ſo unfortunate as to go into the Defendant's houſe as lodgers, that the mother ſuffered the loſs which conſtitutes the ſubject of the preſent charge againſt the Defendant. But a very ſhort time previous to this misfortune, the mother having perceived ſome impropriety of conduct in the Defendant, determined to quit his houſe. The Defendant originally endeavoured to bring about a marriage with this young lady, had banns publiſhed, but thinking that the matter could not be accompliſhed in that manner, for that it would be diſcovered, he therefore determined on taking out a licence, as I have already ſtated; and having done ſo, he contrived to lock up the mother and one of the ſons in the dining-room, and alſo one of the ſervants of the houſe, a little girl who uſed to wait upon the family; and during this period he took the young lady to church, where the ceremony of marriage was performed.

I will ſhew to you that he was then informed of the age of this young lady, as well as of her circumſtances, by converſation with her mother and her brother. It may appear perhaps that the mother ought to have taken a little better care of her daughter, but that can be no excuſe to the Defendant.—I ſhall ſhew to you, that in order to learn the particulars of this young woman's fortune, he went to Doctor's Commons, and examined the will of the uncle; and this he learnt by converſing with her brother, a little boy of only twelve years of age. It is evident therefore that this Defendant aimed at poſſeſſing himſelf of this young lady's fortune, and which indeed he confeſſed after his marriage. The conſequence of

of all this you cannot be ſurpriſed at.—Having thus prevailed on the daughter, the mother, when ſhe came to know it, was tranſported with rage, and ſuffered herſelf to be ſo far carried away by the violence of it, that ſhe committed ſome acts that are not to be juſtified; among which was that of an aſſault upon her ſervant, for which ſhe was afterwards an object of puniſhment. The Defendant being determined to ſecure, as he thought, this object of his, obtained a marriage that is valid in point of law, a marriage by banns. Under all theſe circumſtances, complaint was made to the Court of Chancery, ſtating that the licence was obtained by means of this falſe affidavit, as I have ſtated to you, and it was impoſed upon me by that Court, as a duty, and which I am now diſcharging, to call on you to declare whether the Defendant is or is not guilty of the offence with which he ſtands charged upon this information? An offence, give me leave to ſay, of a very ſerious nature, becauſe the neceſſary conſequence of it is that of bringing thoughtleſs young women, who may happen to poſſeſs a fortune, into ſuch a ſituation as this young girl was brought; a ſituation, from which it is impoſſible for them to recede, and where they will be expoſed to great evils, for they will be entirely at the mercy of the man who may cajole or entice them, who may thus obtain a licence and marry, and which marriage being null and void, and conſequently not binding on the author of it; by which means young women will be expoſed to all the ſerious conſequences of marriage without any ſecurity for its reſpectability. I ſhall make the witneſſes prove the caſe, and entitle myſelf to your verdict.

All the circumſtances thus opened, were proved almoſt to a word by the mother of the young lady and her two brothers.

The evidence of the Defendant having taken this affidavit, and given the uſual bond, &c. were proved by the officers of the Commons.

It appeared alſo that the Defendant had actually ſeen the certificate of the baptiſm of this young lady, which was dated in Auguſt, 1793, by which it appeared that ſhe was baptized the 23d of May, 1784.

The affidavit on which the licence for the marriage was obtained was ſworn in June, 1798.

The Reverend Thomas Walker produced the licence by

by authority of which he married the Defendant to this young lady, on the 26th of June, 1798, at the pariſh church of St. Pancras. He ſaid, that nothing ſtruck him of ſuſpicion of the propriety of the marriage, but ſoon after it was over he thought, and he told the Clerk, the girl appeared to him to be under 21 years of age; the parties had then retired, and the reaſon why the remark did not occur to him ſooner was, that the parties did not come into church until about ten minutes before twelve o'clock, and which occaſioned a good deal of hurry.—His obſervation to the Clerk was, that if the bride was under age, the marriage was not valid, as it was by licence.

Lord Kenyon.—"You muſt not go from this Court without my obſerving to you, that you ought to exerciſe your judgment, and proceed with very great caution in theſe caſes; and if you think the parties, or either of them under age, it is your bounden duty, Sir, to make all neceſſary inquiries before you perform the ceremony. I remember an admonition given with great authority to a Clergyman upon a ſubject of this kind—to a Reverend Doctor, not for having performed the ceremony incautiouſly himſelf, for it was done by his Curate, and he was brought to Lincoln's Inn Hall, where he received a ſolemn admonition from Lord Thurlow, and told it was his duty to make inquiries in caſe there appeared any doubt of the parties being of age."

The witneſs ſaid, he ſhould not have performed the ceremony, if he had had any idea the parties were under age.

Lord Kenyon.—"I think it would have been prudent in you to have been more cautious."

The Defendant had the aſſiſtance of Mr. Erſkine for his Counſel; who, contrary to his own better judgment, was compelled to call ſome witneſſes, but whoſe teſtimony, inſtead of proving any thing for the Defendent, corroborated all that had been ſaid for the proſecution.

Lord Kenyon thought this caſe too clear to render it neceſſary for Mr. Attorney General to reply. The Jury found the Defendant guilty.—This is a Miſdemeanour, puniſhable at the diſcretion of the Court of King's Bench.

COURT OF COMMON PLEAS.

BEDFORD v. M'KOWL.

THIS was an action brought by the Plaintiff to recover damages againſt the Defendant for the ſeduction of her daughter.

It appeared in evidence that the Plaintiff is a widow, and keeps the King's-Head Inn in the town of Longford; that ſhe has five children, three ſons and two daughters, the oldeſt of whom, the unfortunate female for whoſe ſeduction the preſent action was brought, is only ſeventeen, and that ſhe has always lived in a creditable manner. The Rev. Mr. Langhorn, and ſeveral other witneſſes, gave the mother and daughters the moſt excellent character for modeſty, good behaviour, and mutual affection. Anne Hall ſaid that ſhe had been a ſervant in the family for twenty years, that ſhe was preſent when Miſs Bedford was born, and that from that moment till ſhe became acquainted with M'Kowl her conduct was exemplary; ſhe had ever been remarkable for modeſty, piety, and inoffenſiveneſs, and ever affectionate and dutiful to her mother. Mrs. Bedford had watched over her daughters with the moſt anxious care, and had ever ſtrove to keep their minds pure, and their behaviour correct. It appeared that Mr. M'Kowl, the Defendant, who is a Bricklayer of extenſive buſineſs, is a married man, is between 40 and 50 years old; that he has been ſeparated from his wife ten or twelve years; that he became acquainted with this virtuous and happy family ſome time laſt autumn; that by little and little he had got poſſeſſion of the affections of Miſs Bedford; and that he had at laſt prevailed upon her to elope with him. On Sunday, the 24th of November, Mrs. Bedford was very much alarmed at her daughter ſtaying out ſo late in the garden, where ſhe had gone to walk, and ſent Thomas Airs, her hoſtler, to enquire after her. Airs returned, ſaying, that he had ſeen her walking near the bottom of it, and that he had heard, as he ſuppoſed, a return chaiſe paſſing by. Mrs. Bedford waited for ſome time, when, her daughter not appearing, ſhe went out herſelf, and clearly traced her footſteps to the place where the chaiſe had been ſtanding. She now became certain of the melancholy fate of her child; but remained ignorant of the place to which ſhe had been carried for ſeveral days. It appeared that M'Kowl had driven

driven to an inn in Hounſlow; that he had told the landlady that Miſs Bedford was his wife, and that he and Miſs Bedford ſlept in the ſame bed together. Next day he carried her to town, and placed her in lodgings at Pentonville, where they lived, according to the evidence of Mrs. Gibſon, the landlady, as man and wife for nearly a week. Before the end of that the Plaintiff had diſcovered the retreat of her daughter, and ſent a ſervant to bring her home. The girl herſelf was unwilling to go, and M'Kowl refuſed to permit her, but ſome conſtables being called in, ſhe was at length removed from the houſe, and conveyed back to her mother's at Longford. Still, however, the Defendant did not abandon his criminal deſigns; he carried on a correſpondence with the infatuated girl, and again found means to make her elope with him. He this time carried her to a friend's houſe at no great diſtance, where he ſtudiouſly endeavoured to conceal her from her friends. In this he did not ſucceed. The day after her mother came, and notwithſtanding all his efforts, ſucceeded in conveying her home. She afterwards became extremely penitent for her miſconduct, and was ſent, with her own conſent, to live with a Mrs. Ratford, her relation, that ſhe might be ſecure from the farther attempts of her ſeducer. There ſhe remained, though it appeared that M'Kowl had uſed all his efforts again to get her into his power. Several letters from the Defendant were read in evidence, which, though they profeſſed very liberal ſentiments, made conſiderably againſt him. While in one he promiſed to the mother to abandon all views upon her daughter, in another, by the ſame poſt, to the daughter, he paints the ardour of his paſſion, and prays her again to fly again to his arms. Mrs. Bedford, it appeared, had conſtantly drooped ſince the day of her child's imprudent ſtep, and now ſhewed every ſymptom of a broken heart. Several witneſſes were then called to prove that M'Kowl was a man in affluent circumſtances, and able to pay any damages that might be awarded againſt him.

Mr. Serjeant Shepherd, counſel for the Defendant, allowed that the caſe had been completely made out on the part of the proſecution; the few obſervations he ſhould offer were merely meant to procure a mitigation of damages. Theſe he thought ought certainly not to be heavy. In general, when actions of this nature were brought, it

was proved that the Defendant had promiſed marriage to the girl, or in ſome way deceived her. In the preſent inſtance it appeared that M'Kowl had behaved in the moſt candid manner, and that both the mother and daughter knew from the beginning that he was a married man. He had likewiſe behaved in the moſt generous manner; he took her to a reſpectable houſe; he introduced her every where as his wife, promiſed ſolemnly to marry her upon the death of Mrs. M'Kowl, and engaged to provide for her. An abandoned libertine would have taken her to a brothel, and abandoned her the moment his appetite was ſatiated. He confeſſed that his client had behaved improperly, but all men were ſubject to human frailties. It appeared from the Defendant's letters that he had ſtruggled to ſubdue his unhappy paſſion, and that he was ſtung with remorſe the moment the deed was perpetrated. A civil Court was only to conſider of the pecuniary loſs which the party had ſuſtained; the idea of vindictive damages was abſurd; his client was but in indigent circumſtances; and upon the whole he truſted that thoſe aſſeſſed on the preſent occaſion would be very moderate indeed.

Lord Eldon ſaid, that he wiſhed it had fallen to the lot of any other man than himſelf to ſtate to the Jury the evidence given in the preſent cauſe. His feelings were ſo deeply intereſted that he feared he could not perform his taſk with fairneſs and impartiality. He was the parent of daughters, and of daughters much about the age of the unfortunate young lady who was the ſubject of the preſent action; and if, by an award of Providence, it was put in his choice either to ſee one of them ſhare her fate, or to be deprived himſelf of exiſtence, he would not heſitate one moment to ſubmit to inſtant death. He therefore cautioned the Jury to beware, leſt the bias of his own mind ſhould influence his ſtatements. His Lordſhip then proceeded to ſum up the evidence in a moſt maſterly manner, and concluded by recommending to the Jury to conſider what loſs this mother had ſuſtained from the ſeduction of her daughter, and to award damages accordingly. It was not at that bar that the ſeducer muſt anſwer for having embittered the days of an innocent female, and for having ruined the peace of a virtuous family.

The Jury brought in a verdict for the Plaintiff.—Damages 400l.

COURT OF KING's BENCH,

February 13, 1800.

BUNTING v. GLENNY.

THIS action was for the employment of a man to drive a pair of job horſes during laſt ſeaſon at Weymouth, where the Defendant went for her health.—Three ſhillings a day was the claim of the Plaintiff, and proved reaſonable; but on the Defendant's part it was proved that the agreement was, he ſhould board in the Defendant's houſe, and when he got to Weymouth he inſiſted on board wages; and that he behaved with ſuch inſolence the Defendant's wife was obliged to diſcharge him.

Lord Kenyon was of opinion, that the conduct of this Plaintiff, and of Noblemen and Gentlemen's ſervants in general was ſo bad, as to regret they were not under the controul of Magiſtrates, the ſame as artificers. He told the Plaintiff that he had no right to board wages which he had ſo unfairly inſiſted on. The Defendant had paid a ſum into Court, and to that he thought him entitled and no more.

The Jury were of a different opinion, and gave a verdict for Plaintiff to the full amount laid in declaration.

COURT OF COMMON PLEAS.

February 14, 1800.

LEWSINER v. SMITH.

Serjeant Shepherd ſtated, that this was an Action brought againſt the Defendant for the miſconduct of his ſervant. In July laſt, the Plaintiff was returning from Romford to London in a gig, with his wife and daughter; about a mile on this ſide of that town, he tried to get before a poſt-chaiſe; but the poſt-boy, not wiſhing to be beat, had run his carriage ſo near the bank on the right hand ſide of the road as to leave no room for the gig to paſs. Mr. Lewſiner had no time to rein in his horſe, and his gig was daſhed to pieces.

Three witneſſes, Curſhaw, Ratray, and Collins, all ſwore that the accident was ſolely to be attributed to the miſbehaviour of the poſt-boy. This carriage made one

of a line of thirty or forty, which were all driving along the middle of the road; he had looked behind him before the Plaintiff came up, and upon seeing the Plaintiff wishing to pass him, had turned out of the line in which he had been moving *several yards* to the right, and had willingly run foul of the gig. They had measured the road afterwards, and the tracks of the wheels of the carriages, and had thus ascertained the facts which they had stated. Upon asking the boy to whom his chaise belonged, they could get no answer from him, he seeming conscious of guilt, and a man in the carriage had threatened them for putting the question.

On the other hand, it was positively sworn by seven different witnesses, viz. the three passengers in the post-chaise of the Defendant, the three in the one which followed it, and the driver of the latter, that the Plaintiff alone was in fault. The line of carriages was going, not on the crown of the road, but within a few feet of one side of it; the post-boy never moved one *inch* from this line, and was perfectly ignorant that the Plaintiff was coming up, till he looked round upon feeling the wheel of his chaise entangled with that of the gig. Mr. Lewsiner had almost run foul of the carriage behind the Defendant's, and, had he escaped it, he must inevitably have been upset by the next he met. They never saw any one measure the road, nor had heard the post-boy refuse to tell whose servant he was.

Lord Eldon said that the evidence was completely contradictory; it was evident that the witnesses on the one side or the other had grossly perjured themselves. It was for the Jury to determine to which side most credit should be given. The number of persons swearing any one thing was of great consequence, but was by no means decisive; the character, circumstances, and deportment of these persons was likewise to be considered. The witnesses for the Plaintiff were respectable looking men, had been present merely by accident, were perfectly unconnected with each other, and were perfectly disinterested. Those for the Defendant had been rather inconsistent in some parts of their evidence, and had been, it appeared, all on one party to Romford, in carriages belonging to Mr. Smith.

The Jury, after withdrawing for about half an hour, brought in a verdict for the Plaintiff, damages 5l. 15s.

February

February 15, 1800.

CONOLLY v. BROADBRIDGE.

THE wife of the Plaintiff had for ſome time occupied a houſe belonging to the Defendant; but finding herſelf uncomfortably lodged, had wiſhed to remove to another. When a cart was at the door to remove her furniture, the Landlord had come up, and pretending that rent was due to him, had ſeized the whole of her furniture, and appropriated it to his own uſe. Mrs. Conolly had been reduced in conſequence to the greateſt diſtreſs, and her huſband being abſent at ſea, had been thrown deſtitute upon the world. She denied that ſhe was indebted to her Landlord, and this action was brought in the name of her huſband to recover damages for the injuries ſhe had ſuſtained. The above facts were clearly ſubſtantiated, and a receipt produced for rent up to Midſummer laſt, which was within a ſhort time of the period when Mrs. Conolly wiſhed to remove.

No witneſſes were called on the part of the Defendant. Serjeant Cockell allowed that the conduct of his Client had been illegal; but contended that it was by no means ſo cruel and tyrannical as had been repreſented. There was great reaſon to believe that the perſon calling herſelf the wife of the Plaintiff was only his miſtreſs. The ſtep taken by Mr. Broadbridge was merely for precaution; ſeveral of his tenants had, a ſhort time before, run off without paying their rent, and though it could not be proved, it was next to certain that this woman owed ſome rent previous to her paramour living with her. He therefore hoped that, though the Jury muſt find for the Plaintiff, the damages they aſſeſſed would be moderate.

Verdict for the Plaintiff for 15l.

February 20, 1800.

EVANS v. BARTLEY.

THE Plaintiff is maſter of an Academy, to which the ſon of the Defendant had been ſent ſome time in February laſt. Here he remained till the Midſummer holidays, when he was ſent home to his mother with a bill charging her for the board and education of her ſon for *half a year*.

Mrs.

Mrs. Bartley thought she ought only to have been charged from the day on which her son entered till the day on which he left the school; however, she sent him back after the holidays were over, and kept him there for a month. When the boy was removed, Mr. Evans sent in another bill for a full quarter, and insisted that he should be paid both without deduction. Mrs. Bartley refused and this action was brought to recover the debt.—Mr. Serjeant Shepherd said, that he could prove all these circumstances, and likewise that it was the usual custom of the masters of academies to charge in this manner. It was reasonable that they should, as they paid different masters a full quarter for each boy, although he should not attend but a few days.

Lord Eldon said, that if the Defendant sent back her son after she had received the first bill, that was acknowledging its fairness, and that she was bound to pay that and any one *ejusdem generis*.

Mr. Serjeant Cockell said, he could prove that when the boy entered, it was agreed that he should only be charged for from that day; but Lord Eldon replied, that that did not outweigh the circumstance of the boy being sent back after the charge was made, and directed the Jury to find a verdict for the Plaintiff.

February 27, 1800.

WELDON v. FOX.

THIS Cause was tried last term at Guildhall, when a Jury brought in a verdict for the Plaintiff; but the Court, upon the application of the Defendant, set aside this verdict, and granted a new trial. The action was brought to recover the value of goods sold and delivered to —— Payne, whom the Defendant had recommended to the Plaintiff as a man of honour and of large property. It appeared in evidence, that Payne and Fox were formerly partners, and that when the partnership was dissolved, Payne was indebted to Fox in the sum of 1600l.; that Fox had said to some of his friends, that the only way he could recover his money would be to get Payne into credit: that in the month of August, 1797, he recommended him strongly to the Plaintiff, and said he was a man that might be safely dealt with to any amount: that Fox himself, some time

time in the beginning of 1798, ordered a quantity of Mancheſter goods from Weldon; that when they came to hand in April, Fox refuſed to accept of them, but adviſed Weldon to ſell them to Payne; that Weldon did actually ſell and deliver them to Payne; that Payne immediately after ſold them to Fox, and that Payne declared himſelf a bankrupt a ſhort time after. From all theſe circumſtances, it was contended that there had been a compact between Payne and the Defendant to cheat the Plaintiff, and that he had an undoubted right to recover the value of the goods from the Defendant, who had become reſponſible for their payment, and had actually received them himſelf.

On the part of the Defendant it appeared that Weldon was intimately acquainted with Payne, and muſt probably have known his circumſtances; that he particularly was not ignorant that Payne had diſhonoured a bill which was legally due, and that Fox's recommendation of Payne had taken place many months before the goods now in queſtion had been delivered; the Counſel therefore contended that the action could not be maintained. A deed in writing is neceſſary to make any man reſponſible for the debts of another; the law only protects a man when it appears that he has taken proper care to protect himſelf; now it was evident that Weldon, if he had uſed reaſonable caution, might have become acquainted with the deſperate ſtate of Payne's circumſtances: and though it could be proved that Fox did actually receive the goods to his own uſe, ſtill the Plaintiff would not be entitled to a verdict, as the action had been brought upon different grounds.

Lord Eldon, in charging the Jury, ſaid that the only queſtion was, whether the Plaintiff uſed ſufficient diligence to enquire into the circumſtances of Mr. Payne, and whether he had it in his power to aſcertain the falſity of the ſtatements of the Defendant? His Lordſhip ſeemed rather inclined to think, that by this form of action the Defendant could not be come at, although his conduct had been evidently fraudulent. However, the Jury, after conſulting together a few minutes, brought in a ſecond verdict for the Plaintiff for 208l.

COURT OF KING's BENCH.

Courts Martial.

A Motion was made for a Rule to diſcharge a perſon who had been arreſted, after coming from giving his evidence before a Court Martial which then ſat, and continued ſitting, at Pimlico. This perſon, after the breaking up of the Court Martial, went to dine with a friend in Harley-ſtreet, and whilſt at dinner was arreſted. He was to attend the Court Martial again the next day, and the Court waited for him.

Lord Kenyon ſaid, the Court would certainly grant the Rule for his diſcharge. By a clauſe in the Mutiny Act paſſed this Seſſion, witneſſes attending Courts Martial were protected equally with thoſe called on to attend the other Courts. A perſon in ſuch a ſituation, whoſe *domicile* is in the country, muſt dine ſomewhere or other, and he had a right to chooſe where he ſhould exactly be. He muſt be diſcharged.

The Learned Counſel informed the Court there were ſeveral other actions againſt him, and the Officer would not diſcharge him on theſe upon this Rule.

Lord Kenyon.—Then move for an attachment againſt the Officer. I fancy, however, after what has paſſed, the Officer will hardly venture to detain him. The Officer, who was in Court, or the Attorney in the ſuit, anſwered his Lordſhip, "Moſt certainly not."

The King v. Perry.

THE Defendant was brought up to receive the judgment of the Court.

Mr. Mingay, Leading Counſel for the Proſecution, then obſerved, that he was convicted of forging a number of Tickets, for the delivery of a certain quantity of Coals, in conſequence of which, upwards of ſeven Chaldron appeared to be delivered more than had been actually delivered. He ſaid, he was concerned for the Governors and Overſeers of the Poor of the Pariſh of St. George, Hanover-ſquare, who were compoſed of a number of Gentlemen and Noblemen of the higheſt character and diſtinction in the country. Their ſole object was public juſtice, and there never was a more ſcandalous at-

tempt to impoſe and to cheat. After a number of juſt obſervations on the very high price of Coals, as well as of other neceſſaries, on the importance of this Proſecution, and neceſſity of puniſhment, he obſerved, that the moſt guilty man in this caſe, was Abraham Wood, the Coal Merchant, who had undertaken to ſupply the Governors and Overſeers of the Poor of this Pariſh with 300 Chaldron of Coals, and who lives at No. 5, Dartmouth-ſtreet, Weſtminſter. Perry, who is a Lighterman, was a tool, though a pretty active tool, in Wood's hands. Though Wood was indicted with Perry for this offence, he eſcaped in conſequence of the death of a perſon of the name of Haynes, who belonged to the Work-houſe of the Pariſh of St. George, Hanover-ſquare, and who could have given evidence againſt him. But, although Wood was no doubt the moſt wicked man, yet of two very wicked men, the Defendant Perry was a very wicked man.

Mr. Juſtice Groſe obſerved, among other things, that the Defendant had been convicted of a very high miſdemeanor, in having altered three different Tickets or Certificates for the delivery of a certain quantity of Coals, importing that ſeven Chaldrons and a fraction had been delivered, more than in fact had been delivered, with an intent to cheat the Governor and Overſeers of the Poor of St. George's, Hanover-ſquare, up to that extent. Whoever, ſaid his Lordſhip, recollects the great price at which this article of Coals—an abſolutely neceſſary article of life, has been, and attends to the very great care the Legiſlature has taken to prevent frauds like the preſent, will ſee the importance of this proſecution, and the neceſſity for puniſhing this offence. In a great City, like London, the Legiſlature aware of the frauds that might be committed, have taken great care to provide againſt them, by enacting different proviſions to enſure to the conſumer the delivery of the full amount; and for that purpoſe, they have provided that there ſhall be Coalmeters, to act between Buyers and Sellers, under the ſanction of an oath, and that there ſhall be inſerted in a Ticket, the name of the Seller, Conſumer, the quantity, quality, price, the day of the delivery, and names of the Carmen; and which Ticket is to be delivered to the conſumer by the Carmen, But all theſe ſalutary proviſions will be wholly defeated, if the Ticket is altered before it is delivered to the conſumer.

For

For this offence, the Defendant was ſentenced to twelve months impriſonment in Newgate.

The Lord Chief Juſtice obſerved, that this offence was nearly allied to thoſe crimes that were puniſhed in the Law with judgment of Death.

COURT OF COMMON PLEAS.

SINGLETON AND NIXON v. CLEMENTSON AND BORADALE.

THIS action was brought by the Plaintiffs, as aſſignees of Thomas Howell, to recover goods which the Defendants had illegally bought from him after he had committed an act of bankruptcy. It was clearly proved the Defendants had, in the beginning of June 1797, received goods from Howell's warehouſeman to the value of 116l. 15s. 11d. which they had paid by a bill upon Howell himſelf, not then due.—The two points in diſpute were, whether Howell had committed an act of bankruptcy before this, and whether a commiſſion of bankruptcy had been legally ſued out againſt him? It appeared that he ſuddenly went from town about the end of May, 1797; that he left ſeveral bills which were due unpaid; and that he did not return till his goods were in the hands of the Meſſengers. It was likewiſe proved that Nixon, the petitioning creditor, poſſeſſed a bill of exchange drawn by Howell, on a merchant in the city for 100l. which would have become due in September, and this the learned Counſel for the Plaintiffs contended was enough to make out his caſe. But it was contended on the other ſide, that Howell had gone to the country on buſineſs; and that, at any rate, the commiſſion of bankruptcy was illegal and invalid, as it appeared from the bankrupt's books, that he was only owing Nixon 95l. when he granted the bill for 100l. of courſe, that it was not given for a good conſideration, and that the bill did not fall due till ſeveral months after, ſo that if he had diſcounted it, he would not have got 100l. the neceſſary ſum.

After an able ſumming up from Mr. Juſtice Heath, the Jury found a verdict for the Plaintiffs.—Damages 116l. 15s. 11d.

GUILDHALL, LONDON.

June 5, 1800.

HOUSE OF CORRECTION IN COLD BATH FIELDS.

BALLAD v. OLDFIELD.

THIS is a queſtion of great importance to the Public. The Plaintiff who is the Cook in this Houſe of Correction, brought this action againſt Oldfield the Defendant, who had been convicted of keeping a gaming houſe in Oxendon-ſtreet, Haymarket, and who was ſentenced by the Court of King's Bench, to one year's impriſonment in the Houſe of Correction in Cold Bath Fields. The action was brought to recover 5l. 1s. 8d. for ſome proviſions which the Cook had furniſhed to the Defendant beyond the gaol allowance.

The Noble and Learned Judge here told the Learned Counſel for the Plaintiff, that he was moſt clearly of opinion that the Plaintiff could not recover that ſum of money.

The Learned Counſel ſaid, he had a ſtrong confidence, that after his Lordſhip had heard all the circumſtances of this caſe, he would be of opinion that this action was well founded. He ſaid, he was ready to admit, that no liquor of any kind, except water, was permitted by the rules of the Houſe, unleſs it was adminiſtered medicinally. He alſo admitted, that part of the Plaintiff's charge was for porter, but that porter was ſupplied by the advice, and under the direction of a ſurgeon of great reſpectability, Mr. Webb, who belonged to the Houſe, and conceived that it was neceſſary for Mr. Oldfield, who was then in a bad ſtate of health. And he had been told that the magiſtrates had allowed priſoners to have victuals at their own expence, he ſaid, the worthy magiſtrate on the bench (Dr. Glaſs) had come to give aid once on this ſubject. He had been ſubpœnaed by Mr. Oldfield, who was a man of honour, and who would tell the Jury that day by his Counſel, that his conſcience would not ſuffer him to pay that demand, for that although true it was the Cook had fed him, and ſupplied him with beer when he was poorly, yet that Dr. Glaſs would tell them, that by the rules of the Houſe, no porter could be uſed by any priſoner.

Lord Kenyon.—"I am very clearly of opinion, that this money cannot be recovered. Sir George Paul, who has written a book reſpecting the ſtated allowance to be made to priſoners in the County of Glouceſter, has juſtly obſerved, that it is of the utmoſt importance, that that allowance ſhould be rigidly adhered to, except in particular caſes of ſickneſs. And theſe exceptions ought to be made, in conſequence of the orders, and under the immediate care and ſuperintendance of the magiſtrates. I know the worthy Magiſtrate near me, whom nobody can mention without reſpect, is of the ſame opinion. Even the ſtatute of the 25th Geo. II. c. 37. ſect. 8. which provides, that thoſe who have been convicted of murder, ſhall, between the time of the ſentence and the execution of it, be fed on bread and water only, has its exceptions. "Except in caſe of receiving the Sacrament of the Lord's Supper, and except in caſe of any violent ſickneſs or wound, in which caſe, ſome known phyſician, ſurgeon, or apothecary, may be admitted by the goaler or keeper, to adminiſter neceſſaries," &c. But theſe neceſſaries are not to be ſupplied out of the purſe of the party himſelf. I cannot permit parties themſelves to carve out what ſhall be their mode of ſuſtentation."

The Learned Counſel for the Plaintiff ſaid he was not ſorry, for ſeveral reaſons, that the caſe had been brought into that Court. It would teach a leſſon to thoſe who were in the way to be tempted to furniſh ſuch things, that if they did furniſh them, they would do it at their own expence. It would alſo teach Mr. Oldfield, that if they ever ſent him back to that place, he muſt be ſatisfied with the gaol allowance. He ſaid he was anxious, if he could to procure a verdict for his Client. Part of this charge was incurred by furniſhing a newſpaper for the Defendant, and that was not forbidden by the regulations of the Houſe. Mr. Oldfield was anxious to ſee how the games of Faro and of Rouge & Noire were going on, while he was in cuſtody.

Lord Kenyon.—"People are ſent there for other purpoſes—for honeſt labour, to accuſtom them to habits of induſtry, in order to be reſtored to their rank in ſociety, better men than they formerly were. But if they are to be permitted to live, and to eat and drink juſt as they pleaſe, we can entertain but very ſlender hopes of reformation."—Plaintiff nonſuited.

June

June 6, 1800.

SITTINGS BEFORE LORD KENYON.

HANNA *v.* JACKSON.

Mr. Erſkine ſtated, that on the 20th of February laſt, Meſſrs. Smith, Kemble, and Co. received an order for ſending a large quantity of tea to Leeds. It was packed up in two different cheſts, marked No. 1, and No. 2, and was ſent to the Bull and Mouth in order to be forwarded by the Defendant's waggon. The cheſt marked No. 1, was loſt, but the other cheſt arrived in ſafety.—The bookkeepers refuſed to take charge of theſe goods, becauſe the Porter who carried them refuſed to pay him 2d. for booking each of them, and which, it was contended, was an impoſition. The action was brought to recover the ſum of 17l. 18s. 10d. the value of the cheſt of tea that was loſt after it was delivered to the care of the Book-keeper. The action was brought for the expreſs purpoſe of trying the queſtion, whether the Book-keeper has a right to this 2d.

Mr. Fairbrother, warehouſeman to the plaintiffs, proved theſe facts.

Robert Adams ſaid he was a porter, and was ſent to the Bull and Mouth with theſe two cheſts of tea, on the 24th of February laſt. He delivered them to a man of the name of Greenwood, who is the bookkeeper, and to whom he had frequently delivered goods before. Greenwood told him they would not be forwarded till the booking was paid. The Porter told him he had delivered them according to his order. When he had formerly delivered goods for that waggon, he had paid for booking from the beginning of January laſt. The witneſs told the Book-keeper that he was ordered not to pay for the booking. He left the goods, and Greenwood knew they were for the purpoſe of being conveyed to Leeds. On croſs examination by Mr. Mingay, the witneſs ſaid Mr. Kemble had ordered him not to pay for the booking of theſe teas. The 2d. had been paid ſome little time before. Greenwood told him they would not be conveyed till the 2d. was paid. He told him he would not take charge of them.

Another witneſs ſaid, that he, on the part of the Plaintiffs, had called at the Bull and Mouth to inquire after

theſe cheſts. He ſaw Richard Greenwood, who told him that one of the cheſts had been forwarded, and that the other was not, and that moſt probably it was loſt.

Mr. Mingay, as Counſel for the defendants, ſaid, there had been a diſpute between the traders of this town and the carriers, whether this 2d. ought to be paid. The Learned Counſel was here interrupted by Lord *Kenyon*, who ſaid—"I am afraid Mr. Erſkine you have not made out a caſe on the part of the Plaintiff. The law has taken care of traders. I believe, though I do not ſpeak with abſolute certainty, it gives Juſtices at Seſſions a power to regulate the amount of the charges to be made by carriers. Whether it is reaſonable to exact this 2d. for booking, or no, I will not pretend to ſay. But if a man carries goods, he has a right to impoſe his own terms. He may ſay, I will receive booking from you, and not from another; I will carry goods for you, but not for another. When the goods were brought to the Bull and Mouth, the Porter endeavoured to thruſt them down the throat of the Book-keeper, which he had no right to do."

The Learned Counſel, on the part of the Plaintiff contended, that the Carrier was bound to take the goods if his carriage was not overloaded. There were ſome caſes to that effect decided before Lord Holt. Carriers were bound to carry goods at the rate fixed by the Magiſtrates.

Lord Kenyon—"I ſhould bow to ſuch caſes, but I do not know any ſuch caſes."

Mr. Erſkine ſaid, if a man could take 2d, he might take 3d. 4d. &c. and that would enhance the value beyond the fixed rate.

Lord Kenyon—"If you can ſhew the Juſtices have fixed a rate, and that the carriers have exceeded that rate, and demanded a greater ſum, it is well. But there is no evidence now before me, that the Magiſtrates have fixed any rate, and that the carriers have exceeded it. This is a queſtion that concerns the whole commercial world, and how it is fit to be ſettled I do not know. But I once knew a caſe, I think from Fetter-Lane, where they took for booking and alſo for warehouſe room, and I began to try that cauſe with a very ſtrong bent againſt the charge; but it was afterwards proved that it was moſt convenient to the parties intereſted, that ſuch a ſum ſhould be paid. It was proved to the ſatisfaction of the Jury, that it was a moſt

moſt reaſonable demand, and that the benefit ariſing from it was much greater than the ſmall ſum paid. The Plaintiff here goes on a contract, and I muſt take men's meaning from the words they uſe."

Plaintiff nonſuited.

COURT OF KING's BENCH.

Saturday, June 7.

SITTINGS BEFORE LORD KENYON AND A COMMON JURY IN GUILDHALL, LONDON.

DENT, Esq. v. HOWSE.

Mr. Garrow ſtated his client the Plaintiff to be a Gentleman of fortune, who upon his return his return from India had purchaſed an eſtate called Danbury Hall, in Eſſex, and this action was not brought for the damages which the verdict of the Jury would direct the officer of the court to record upon the Poſtea, but to correct a groſs, ſcandalous, and growing evil, which was too much connected with a ſubject which we all muſt feel, and have felt a very conſiderable time, and in which we are all moſt immediately and moſt materially intereſted. He ſpoke of the enormous, and he was afraid he might juſtly ſay, ſcandalous price of Butchers' Meat—he was not ſure that ſome of the obſervations which he felt it his duty to make upon the ſubject matter of this cauſe, might not give offence to a very conſiderable, at leaſt a large body of perſons; but it was not his habit to give himſelf any trouble upon that account; he would purſue his duty and call vices by their proper names, let that give uneaſineſs to whom it might: for he concurred with a great and high authority, recorded by a preſs, which was hardly yet dry, "that the freedom of ſpeech is one of the moſt eſſential parts of a free conſtitution under which we live." If this be true, as applicable to the great aſſemblies of the State, *a fortiori*, it was true of the proceedings of courts of Juſtice, becauſe in them, Judges, Juries, Advocates, and others, had to diſcuſs points intimately connected with the pecuniary concerns and deareſt intereſts of the individuals who came before them; if, therefore, Judges or Advocates ſhould ever be induced by any thing that may paſs any where, to ſtop ſhort of ſtating their real

ſenſe and feeling of caſes that came before them for diſcuſſion in Courts of Juſtice, he apprehended he ſhould have the aſſent of the authority he had alluded to, when he ſaid, that when the freedom of ſpeech was curtailed, there was an end of the authority of our Conſtitution, and, therefore, if he ſhould happen to give offence, he ſhould care nothing. He was aware of having digreſſed a little: he ſhould now ſtate the circumſtances of the caſe now before the Jury—it was an action to recover what damages they ſhould think fit to give againſt the Defendant, for not performing his duty in ſelling ſheep and lambs the property of the plaintiff. Perhaps the Jury were acquainted with the manner of ſelling ſheep in Smithfield Market—when any perſon had any cattle to ſell, the uſual way was to ſend them up to Smithfield, for there the demand was greateſt, conſequently there the price was higheſt. However, no perſon could ſell any of his cattle without the intervention of ſuch a perſon as that of the defendant, who was called a Middle-man, or Saleſman, who made the contract between the buyer and the ſeller. He believed he might ſay that the duty of the Saleſman was to get at leaſt as much money as he could for the property entruſted to his care to ſell, that is to ſay to ſell it for the beſt price which he could obtain in the market, fairly. It was not his buſineſs, nor was he inſtructed to ſay, that Mr. Howſe, the Defendant, had been guilty of any fraud in this buſineſs—he had no objection to his going out of court with as good a character as he came into it; but if it ſhould turn out that he did not get for theſe ſheep and lambs which were entruſted to him to ſell for the Plaintiff, as much money as, by uſing his utmoſt diligence, he might have got for them, he ought to pay to the Plaintiff the difference between the beſt price of the day on which he ſold them, and that for which he did ſell them. There were eight ewes, ſixty-two lambs, and three rams ſent to Smithfield, and the Defendant, Mr. Howſe, a Saleſman, undertook to ſell them. The Plaintiff expected at leaſt five or ſix and twenty ſhillings a-piece for his lambs, inſtead of which the Defendant gave an account of his having ſold them at eight ſhillings a-piece, ſo that inſtead of having about eighty pounds for his lot, he had a beggarly account of 29l. 18s. 9d. to receive. Such was the return to this Gentleman in Eſſex, from this Middle-man in Smithfield

in

in June laſt year, when thoſe who ventured to taſte lamb muſt pay for it at the rate of eight ſhillings a quarter at the very loweſt. It might be aſked, "How does this happen?" To which the anſwer was this—"From the privileges of Smithfield Market, if any little Butcher conſumed five or ſix ſheep a week, and as many lambs, he might go to Smithfield at the early hour when the cattle bellow, and ſtay until every one of them diſappeared, and not be the nearer his object, for he could not buy. Why? becauſe he, wanting but a few, nobody cared to ſell to him; but if a great man ſhould leave his chariot at the end of the ſtreet leading to the market, and come up, muffled in a great coat buttoned to the chin, and expreſs a wiſh to buy, he ſhould have as many as he pleaſed—the whole market is at his ſervice, and then the ſmall butcher ſhall buy of this great man, and at what price he ſhall pleaſe to fix. There are of theſe ſame great men ſeven or eight who do juſt as they pleaſe, and this is the ſecret of the price of meat to all thoſe who come to buy it of a butcher." He would dare ſay, that a number of perſons would appear from Smithfield to ſay that the defendant was a man of good character; but that was not the queſtion. The queſtion was this—"Had Mr. Dent the Plaintiff, received of Mr. Howſe the Defendant, the beſt price which the article was worth?" If not, whether from ignorance or negligence, or any other cauſe, the Plaintiff was entitled to have of the defendant in this action, the difference between the real value of the articles at that time in the market, and the ſum which the defendant tendered to the Plaintiff.

It appeared by the evidence on the part of the Plaintiff, that he had ſent three rams, eight ewes and ſixty-two lambs to Smithfield, and that they were ſold by the Defendant, who is a Saleſman at Smithfield, for the Plaintiff, and that they produced only 29l. 18s. 9d. The opinion of ſome of theſe witneſſes was, that the lambs were worth ſomewhere about 14s. a-piece at Danbury. They were middling Lambs, of a mixture between the Welſh and the South Down breed; but they knew nothing of what price they would fetch at Smithfield at this time, which was laſt June.

Mr. Erſkine, on behalf of the Defendant, admitted the general principles laid down by Mr. Garrow, but denied their application to this caſe. He approved of every thing

thing that had been ſaid upon the freedom of ſpeaking in this country, and wiſhed always to ſee it accompanied with the freedom of eating; he apprehended the latter bleſſing, in a great meaſure, produced the former: he entered upon a ſhort diſſertation on both, and treated them with great humour; but taking up the ſubject of the Freedom of Speech ſeriouſly, he ſaid he did not mean to confine it to one claſs of men, and not to extend it as freely to another claſs—not to one rank or to one place, to the excluſion of any other rank or any other place; in ſhort, he was a friend to the Freedom of Speech, as governed by the Law of this land: he thought it was of the eſſence of our Conſtitution. No man reverenced the Houſe of Lords more than he did—no man valued the Houſe of Commons more than he did: it was an Aſſembly in which, for a great part of his life, he had the honour of a ſeat, and yet, if the Houſe of Commons were to go out of their Juriſdiction (an extravagant ſuppoſition), and to call on him to acknowledge that he had not the privilege of exerciſing his judgment as an Advocate at the Bar, and to ſpeak freely there without being accountable to them, he ſhould ſay as Sir Fletcher Norton ſaid of them—"That he regarded no more what they ſaid or did, than he would that of a Club of Porters in a tap-room." So much for the Freedom of Speech—as to the caſe now before the Jury, the anſwer on the part of the Defendant, was a very ſhort and a very plain one: Theſe lambs and ewes were not fit for ſlaughter: they were what is called *ſtore ſtock*, for which Smithfield is not a very good market; that they were ſold at the beſt price the market would fetch for ſuch goods; that the Defendant ſold theſe lambs for 8s. a-piece, to a perſon who ſold them at 6d. a-head profit; that the beſt was done by the Defendant, in his character as Saleſman, that could be done, and that however the Plaintiff might be diſappointed in the price, it was the beſt he could have, and that therefore he could not complain of the Defendant, and conſequently he could not maintain this action.

Several Witneſſes on the part of the Defendant proved that theſe lambs were very poor and lean; that they were fit for ſtore ſtock, but not ſlaughter. The man who bought them of the Defendant proved he gave only 8s. a-head for the lambs, and this was rather above than below their value:

value: he ſold them afterwards for ſixpence a head profit. Other witneſſes proved they were not of more value than the price they fetched at the market.

Lord Kenyon—"After this evidence, I think it impoſſible to entertain a doubt on this caſe: I adopt a great deal of what Mr. Garrow ſaid upon the opening of this ſubject. I am confident that the Public do ſuffer greatly by machinations, which the Legiſlature cannot, perhaps, prevent. This is a very ſerious ſubject. Our anceſtors thought it wiſe, in aid of the Common Law of our Land, to enact a ſtatute againſt foreſtalling the articles of food: this ſtatute has been thought good policy, from the time of Edward VI. down to our own memory, but which was repealed, I know not why—certainly thoſe who repealed it, thought they were acting wiſely; at the ſame time I rather think it might have appeared otherwiſe, upon more mature deliberation. Men may form fine theories in their cloſets, but which men of a better knowledge of the world may know to be fallacious and deluſive. A very eminent Author publiſhed a very celebrated, and indeed an excellent Book in many reſpects, the Treatiſe on the Wealth of Nations; in which that ingenious writer ſays, "foreſtalling and regrating are no more to be dreaded than witchcraft." Another Perſon of high character with ſome flaws in it, ſince adopted that idea, and he was the man to whoſe exertion was owing the repeal of the Statute of Edward againſt Foreſtalling; undoubtedly it would have been better if that ſtatute had not been repealed. It is well the extent of the deſign in the repeal was not carried up to affect the Common Law of the Land: I wiſh the old ſtatute to be re-enacted.—However, this is only general talk; it is impoſſible to reſiſt the evidence here on behalf of the Defendant; it is plainly proved he could not get more for the property than he ſold them for, and therefore we are really borne down by the evidence completely. I think there is an end of this Action."

Plaintiff nonſuited.

COURT OF COMMON PLEAS.

July 15, 1800.

SITTINGS AT GUILDHALL, BEFORE MR. JUSTICE CHAMBRE.

WILSON *(qui tam)* *v.* CROWTHER.

THE Defendant is a clergyman, and this action was brought againſt him for not reſiding on his living.

It was proved on the part of the Proſecutor, that Dr. Crowther is Rector of the United Pariſh of St. Mildred and St. Margaret Moſes, Cheapſide, and that he has for many years let out his parſonage-houſe, and reſided himſelf in a village at a ſhort diſtance from town. It was allowed by Mr. Serjeant Shepherd, that his Client had been abſent from his pariſh, as deſcribed by the witneſſes, but he contended that notwithſtanding there was no ground for the action.—Dr. Crowther's ſtate of health was ſo very bad as to render a country reſidence indiſpenſibly neceſſary to him. At the riſk of injuring it, he came to town regularly every Sunday, and performed the duties of his office, though he was often ſo ill as to be obliged to ſtop in the middle of the ſervice. The very inſtant the congregation was diſmiſſed he invariably returned to his cottage, and reſolutely reſiſted the earneſt ſolicitations of his friends who preſſed him to dine with them. So convinced were his pariſhioners of the rectitude of his conduct that they all idolized him, and at the ſame time, although he were willing, would not conſent to his reſiding among them, as they knew well that in that caſe they would ſoon be deprived of his paſtoral care. Theſe ſtatements were ſubſtantiated by ſeveral witneſſes.

Mr. Serjeant Bailey in reply entered into an able juſtification of the conduct of Mr. Wilſon. If there were 800 non-reſident clergymen, did not *he* deſerve praiſe who exerted himſelf to leſſen their number, and of courſe the diſgrace of the body to which they belong? As a proof that he was ſolely influenced by a zeal for religion and morality, he has inſtructed me, ſaid Serjeant Bailey, to declare that he is convinced the abſence of the preſent Defendant was involuntary, and that he willingly drops the action.—Verdict for the Defendant.

MANCHIN

MANCHIN *v.* ASBEE.

THIS action was brought upon a bond for the penal ſum of 8,000l. to cover a debt of 4,000l. purporting to have been granted by the Defendant to the Plaintiff on the 29th of April 1799. It was ſtated by Mr. Serjeant Cockell, that Mr. Manchin was a young gentleman in the profeſſion of the law, and Mr. Aſbee an eminent ſtock-broker. Mr. Manchin, in the ſpring of 1799, was by the kindneſs of his friends in poſſeſſion of a conſiderable ſum of money, and in an evil hour he became acquainted with Mr. Aſbee, to whom, upon earneſt ſolicitation, he lent 4,000l. In October laſt he had occaſion for this money, and made a demand upon his creditor, who to his unſpeakable ſurpriſe refuſed to pay. Unfortunately he had not then the bond in his cuſtody, and he was obliged to go to Mr. Aſbee's houſe, and take it in a way which, though perfectly juſtifiable and proper, had rather at firſt ſight a look of diſhoneſty. Having got it into his hands, he immediately arreſted the Defendant and brought this action, that he might be able to pay back the ſums of money he had borrowed from his friends.

The execution of the bond was clearly proved, and it was likewiſe proved that the Defendant had actually received the 4,000l. in caſh, in conſideration of which it was granted.

Still Mr. Serjeant Shepherd contended that the Plaintiff had no title to recover. The pleas ſtated in the record, though numerous for form's ſake, might be all compriſed in two, either of which, if made out, would be ſufficient to put an end to the action, and both of which he ſhould make out in the moſt ſatisfactory manner. The firſt was, that the conditions of the bond had been ſatisfied; and the ſecond, that the 4,000l. had been employed in an illegal ſpeculation entered into by the two parties, ſo that at all events the Defendant was not bound in law to fulfil them. The truth of the matter was, that Manchin had formed a partnerſhip with Aſbee, according to which each was to pay in a certain ſum for the creation of a joint ſtock to be employed in ſtock jobbing. Bonds were given that if their ſpeculations ſhould turn out to be ſucceſsful, each might receive what he had originally diſburſed. From miſconduct, however, or bad luck,

luck, they had been extremely unfortunate, and loſt the whole of their capital in a few months. When they ſaw that their affairs were deſperate, which was about October, they had a meeting, and there finally adjuſted their concerns, and diſſolved the co-partnerſhip. The bond being conſidered as cancelled, was delivered up to the Defendant, but did not long remain with him, for the Plaintiff ſwore a debt of 4000l. againſt him, and having ſhut him up in a ſpunging houſe, took a poſt-chaiſe, rode out to his houſe at Kennington, with a falſe key opened his deſk, and took from it this bond, and ſeveral other papers, to which he had equally little right.

In ſupport of this caſe a long ſeries of letters was read from the Plaintiff to the Defendant, in which he talks a great deal about the funds, and frequently mentions *our* ſpeculations in them, and *our* accounts. In one dated in October, he adviſes Mr. Aſbee to try to prevail upon a friend, who was then in Holland, to ſend him an account of the tranſactions of the army, as he might thus *do great things*.

Many witneſſes were then called to give parol evidence. None of them could prove that any agreement had been entered into, or that any ſtock-jobbing tranſaction had taken place between the parties, prior to the granting of the bond. The only proof that a final ſettlement had taken place was the evidence of Mr. Peter Hill, who ſaid he went into Mr. Aſbee's parlour one morning in October, when he was ſitting at breakfaſt with the Plaintiff. A great number of looſe papers were lying upon the table, and among others a bond. In a few minutes Mr. Aſbee took them all up and carried them away, ſaying, "Every thing is now ſettled." Manchin then ſaid, "Hill, you'll never get the 900l. that you fooliſhly lent to Harley; but we are all fools, and I myſelf have been as great a fool as any body." The account given of the manner in which the bond was procured by the plaintiff, turned out to have been perfectly correct.

After a very animated reply from Mr. Serjeant Cockell, and an able charge from Mr. Juſtice Chambre, the jury retired. When they returned, they brought in a verdict *for the Defendant*.

GUILDHALL,

GUILDHALL, LONDON.

July 16, 1800.

SITTINGS BEFORE LORD KENYON AND A SPECIAL JURY OF MERCHANTS.

PETRIE AND CO. *v.* GOLDSMID AND ELIASON.

THE Counſel for the Plaintiffs ſtated, that this action was brought by the Plaintiffs, who carried on trade to a conſiderable amount in this city, againſt the Defendants, who are Bill Merchants, alſo reſiding here, to recover 300l. under theſe circumſtances. A houſe at Hamburgh, of the firm of Jacobs and Co. drew a bill on the Plaintiffs for 300l. dated Dec. 7th, 1798, payable at two months. That bill was the ſecond of the ſet, and was remitted indorſed. It was uſual only to indorſe one part of a bill till it was found that it had miſcarried, and then the ſecond part of the ſet was indorſed. As the ſecond part of the bill in this caſe firſt arrived from Hamburgh indorſed, it was taken for granted that the firſt part had ſome how or other been loſt. When this ſecond part was preſented to the Plaintiffs for acceptance on the 17th of December, when it arrived it was accepted, and afterwards paid; the firſt part of the ſet was remitted to the Defendants on the 11th of December, 1798, and arrived on the 19th of the following January. It was alſo preſented immediately for acceptance, and it was duly accepted and paid, ſo that the Plaintiffs, upon two parts of the ſame bill for 300l. had paid 600l. and therefore this action was brought to recover back one of theſe 300l. This caſe being fully ſubſtantiated on the part of the Plaintiffs,

Mr. Erſkine, for the Defendants, ſubmitted to the Jury, that the Plaintiffs had paid this bill twice, in conſequence of their own negligence. If when the firſt part of the bill was preſented for acceptance, they had looked at their bill-book, they would have ſeen that the bill had been accepted and paid before. The Defendants had given their correſpondents, Jacobs and Co. credit for theſe two ſums. Jacobs and Co. were now bankrupts, and in the Defendant's debt 17 or 18,000l. and the queſtion was, which of theſe parties was to ſuſtain this loſs. It appeared from the evidence of the Defendant, that the houſe at Hamburgh was 12,000l. in debt to the Defendants, at the time when theſe bills arrived in England.

After all the evidence was heard,

Lord Kenyon. The Defendants keep a bill-book, as well as the Plaintiffs, and ſhould have taken care not to have preſented the ſame bill twice over. It is well known, and fixed law, that where the ſame bill is paid twice, the money ſo overpaid muſt be refunded. The only excuſe for this buſineſs is, that it muſt have been a miſtake, owing to hurry. Mr. Goldſmid is a perſon of large fortune, but he, as well as all other men of large fortune, ought to conſider that character is a very grand eſſential to a merchant, and as ſuch he ought to pay back the money without heſitation.—Verdict for the Plaintiffs for 300l. and 25l. for intereſt.

BEFORE LORD CHIEF JUSTICE ELDON.

July 16, 1800.

VADE *v.* WOOD.

MR. Serjeant Beſt ſaid, that this action was brought to recover damages againſt the Defendant for having cut down a leaden pipe which belonged to the Plaintiff, and was eſſential to his comfort and that of all his family. Its nature and its uſe he begged to be excuſed from ſtating. It might perhaps prove a nuiſance, but it was there when Mr. Wood took a leaſe of the houſe, and therefore he had no right to complain of it. Mr. Beſt proceeded to open the caſe very fully, and ſaid many witty things, but which we fear would be reckoned *offenſive*, notwithſtanding the *ſalt* which he mixed with them.

From the witneſſes who were called it appeared, that the parties both live in Cornhill, and are next door neighbours. That the pipe, which comes from a certain cloſet in the Plaintiff's houſe, entered that of the Defendant, and was conveyed down his ſide of the party-wall; and that he, being incommoded by its *exceſſive fragrance*, cut down about ſeven feet of it, cloſed up the bore, and rendered the cloſet of the Plaintiff completely uſeleſs. The houſes both belong to the pariſh of St. Michael's, Cornhill, and the Pariſh Surveyor proved that they were reſpectively in their preſent ſituation when Mr. Wood entered on poſſeſſion.

The fact of cutting the pipe was admitted on the part of the Defendant, but it was ſtrongly contended that it was a nuiſance, and that he had an undoubted right to remove

remove it. Could any one ſay, aſked Serjeant Shepherd, that a man ought peaceably to ſubmit to ſuch inconvenience, when the ſource of that inconvenience was every moment before his eyes, and when he poſſeſſed the means of getting rid of it with eaſe? or could any one ſay that a man had a right to conduct a pipe of this nature through the houſe of another! It might have been there when Mr. Wood took the premiſes; but he was not, nor could poſſibly be aware of that circumſtance, for the pipe was completely concealed by wainſcoting in the rooms through which it paſſed. It had not been there for many years, as he would prove it was erected by the immediate predeceſſors of the parties in this cauſe, who were partners in buſineſs, for their mutual accommodation. Mr. Wood was unconſcious of the exiſtence of ſuch a nuiſance till laſt ſummer, as till then he could prove that Mr. Vade was equally ignorant of it, or at leaſt had made no uſe of it. In ſhort, he ſaid there could be no doubt that the Defendant had only exerciſed the powers given him by the *Building Act*, and that there was no ground for the preſent action.

Lord Eldon ſaid it could ſerve no end to call witneſſes. The conduct of the Defendant was certainly illegal, ſince the premiſes were exactly in the ſame ſtate when he took his leaſe. He gave full credit to all that had been urged, but ſtill the caſe, as opened, was not a good one. It was lamentable that ſuch a cauſe as this had been brought into a Court of Juſtice. The evil complained of was one of thoſe which law could not remedy, but muſt certainly aggravate. The matter probably would reſt there, but Bills would be filed in Chancery, to forbid the parties the uſe of their reſpective privies, and various other ſuits commenced, till they diſcovered that it would have been better to have referred their diſputes to a friend, or to have quietly ſubmitted to *neceſſary* evils.—Verdict for the Plaintiff 40s.

BEFORE LORD KENYON AND A SPECIAL JURY.

Monday, July 21.

BURTON *v.* LLOYD.

THIS was an Action to recover Damages of the Defendant, for his having given to the Plaintiff a falſe character, of and concerning a perſon of the name of Goldſmith,

Goldſmith, by which the Plaintiff was induced to truſt him, and in conſequence of which he ſuſtained a loſs.

Mr. Erſkine, in opening the Caſe for the Plaintiff, gave a hiſtory of the origin and progreſs of Actions for giving falſe characters, whereby innocent men were deceived, and induced to give credit to perſons of inſolvent circumſtances, and in conſequence of which thoſe giving the credit, ſuffered by the party truſted turning out to be inſolvent. At one time it was doubted, by ſome learned men in Weſtminſter-Hall, whether ſuch an Action as this could be maintained, ſince giving to another a better character than he deſerved, was only telling a lie, and it was the fault of any body who ſuffered by it to believe ſuch a ſtory; that it bound nobody, and that giving credit was a mere voluntary act, and if any injury was ſuſtained by it, that injury a man brought upon himſelf, by his own credulity; but all this was ſettled in the caſe of Paſley *v.* Freeman, which was argued at full length, and ſolemnly decided, and it was now a point of Law ſettled, that a man muſt not ſay of another, in his favour, any more than againſt him, more than he knows to be true; becauſe, by ſaying of him more than he knows, he may induce a third perſon to give him credit, who would not have given ſuch credit, if ſuch character had not been given; therefore, if any credit ſhould be given on ſuch an account, and any loſs aroſe from the giving of ſuch credit, the Law ſaid, that the perſon who gave ſuch character, and was the inducement to giving ſuch credit, ſhould anſwer in Damages to the party who ſhould ſuſtain ſuch injury. Nor was there any hardſhip in ſuch a Law, it was only tying up a man's tongue from telling a lie, no very violent reſtraint upon the liberty of a good or moral ſubject. When a perſon applied to another for the character of a third perſon, the perſon to whom the application was made, was not bound to ſay any thing, but if he did ſay any thing, he muſt take care that what he ſaid, was the truth.

It was proved on the part of the Plaintiff, by Mr. William Bradbury, his clerk and ſaleſman, that on the 25th October laſt, Mr. Rhodes, an agent for Goldſmith and Co. purchaſed 76 pieces of chintzes, amounting in value to 276l. 9s. for that houſe. That the witneſs aſked for a reference to their character, and was referred to the houſe of Benys, Lloyd, and Co. That he went

to

to that houſe and ſaw the Defendant Lloyd; that he told him Mr. Rhodes had looked out a parcel of goods, and had referred to him for the character of Mr. Goldſmith, and he wiſhed to know if the Plaintiffs might ſafely truſt Goldſmith and Co. with goods to the amount of 500l. or 1000l. for ſix months; that the Defendant anſwered, "We are in the habit of doing buſineſs with them to a conſiderable amount, and conſider them perfectly ſafe" In conſequence of this, the Plaintiff gave Mr. Goldſmith credit immediately for goods to a conſiderable amount, for which they took Bills at two and four months, but which were not honoured, and Mr. Goldſmith afterwards became a Bankrupt.

It appeared alſo, by other evidence, that the Defendant at the time he gave the character had not received payment for the bills which had been accepted by Goldſmith for a conſiderable order with which the Defendant had furniſhed him. That he had received a ſecond order, which he had delayed to execute, and which, in fact, he never had executed, but that Goldſmith was paying the Defendant's debt by driblets; from which it was contended, on the part of the Plaintiffs, that he was endeavouring to pay his own debt by giving Goldſmith a character, and ſo, as the Counſel termed it, *licking himſelf whole.*

Mr. Garrow contended on the part of the Defendant, that he did not know at the time he gave to the Plaintiff this character of Goldſmith, that he was not a perſon who might ſafely be truſted; that indeed he became bankrupt in conſequence of the detention of a large conſignment of goods to Liſbon, waiting for convoy ſo long that they loſt the market for which they were intended, ſo that he did not get his remittances in time to anſwer the bills he had accepted, and which became due here, but that there was every reaſon to believe that if theſe goods had arrived in time, Mr. Goldſmith would have had ample funds for diſcharging all demands upon him, &c. but that failed, and he ſtopped payment; but the Defendant had no reaſon to apprehend that Mr. Goldſmith was inſolvent at the time he gave him this character. He examined ſome evidence upon this caſe, but it did not come up to the full extent of the opening.

Lord Kenyon informed the Jury that this action was founded in morality, and tended to the general benefit

and ſecurity of ſociety in mercantile tranſactions in particular. The fact was, that if any man is applied to for the character and reſponſibility of another. he is by no means *bound* to give an anſwer; but if he does give a character, he is bound to ſpeak the truth, and if he does not, he muſt anſwer the conſequences. The ſhort ground for deciding the iſſue between the parties in this caſe was, "Whether the Defendant knew, or had reaſon to believe, at the time he gave to the Plaintiff this character of Goldſmith, that he was a man in ſuch circumſtances that he might ſafely be truſted?"—The words of the Defendant were, "we are in the habit of doing buſineſs with him to a conſiderable amount, and we conſider him perfectly ſafe."—The ſingle queſtion was, Whether this was really the caſe? Whether the Defendant believed that Mr. Goldſmith deſerved this character or not?—His Lordſhip was ſatisfied upon the evidence that this was not, on the part of the Defendant, a full and fair repreſentation of all he knew of Mr. Goldſmith; but of this the Jury would judge.

Verdict for the Plaintiff, Damages 259l. being the amount of the Debt from Goldſmith to the Plaintiff.

Lerd Kenyon ſaid, the Jury had done perfectly right by this verdict, but the Plaintiff would of courſe deduct from theſe Damages any ſums they might receive as dividends under the Commiſſion of Bankruptcy of Goldſmith.

Mr. Erſkine ſaid, certainly they would as ſoon as they received them.

Lord Kenyon.—"I do hope that theſe repeated verdicts will, in time, have the effect they ought to have, as Mr. Erſkine ſaid when he opened this caſe, that men will feel when they give an anſwer to an application for a character, that they ſhould not tell a lie."

COURT

COURT OF KING'S BENCH,

November 20, 1800.

THE KING *v.* WADDINGTON.

FORESTALLING.

THE Defendant appeared in Court, and his Counſel, Mr. Law, was proceeding to move in arreſt of judgment. He commenced, by obſerving, that the Defendant had not been guilty of any crime cogniſable by the laws of the country.

Mr. Erſkine and Mr. Garrow aſked, whether the Defendant was in Court? He was ſitting under his Counſel. They obſerved, he was not in that part of the Court in which Defendants were uſually placed, and they knew no reaſon why a favour ſhould be accorded to Mr. Waddington, not uſually granted to others.

Mr. Erſkine further remarked, that if his Learned Friend, Mr. Law, could make out that the Defendant had not been guilty of any crime, of courſe the Court would not pronounce any judgment, and that a motion in arreſt of judgment would be unneceſſary. He would, therefore, now move for judgment.

The Defendant was not ordered to ſtand up in the middle of the Court, but retained his ſeat near his Counſel.

Mr. Juſtice Le Blanc, before whom, and a Special Jury, the Defendant was tried, at the laſt Worceſter Aſſizes, read his report of the trial; it was extremely long, the trial having occupied eleven hours. The information conſiſted of ſeveral counts, which ſtated, that the Defendant, wickedly intending to enhance the price of hops, had ſpread divers reports with reſpect to that article, and particularly, that the ſtock in hand was nearly exhauſted, and that there would ſoon be a ſcarcity; and that he did ſo, with the intent and deſign of preventing the planters from carrying their hops to market. The information alſo ſtated, that he had engroſſed and got into his hands a large quantity of hops, with intent to reſell the ſame at an unreaſonable profit. The offence was laid in various ſhapes, but to the ſame effect, and the Defendant was found guilty generally.

Mr. Law ſaid, it was now his duty to addreſs the Court on behalf of the Defendant, who ſtood convicted of

of certain facts, the effect of which was to enhance the price of proviſions in the article of hops. If the Defendant were not warranted in the perſuaſion he entertained of the legality of his conduct, as founded upon the ſolemn records of the Court, and the declared ſenſe of the Legiſlature, recently expreſſed, and that what he had done was no crime; if he were not warranted in conſidering his ſpeculations in the article of hops as the exerciſe of that free and unreſtrained traffic in which every ſubject was at liberty to engage, then undoubtedly he ſtood before the Court as a fit object for its puniſhment; but if it ſhould appear that the graveſt and wiſeſt Lawyers of the country had ſanctioned his proceedings; if the plain ſenſe of an Act of Parliament, and the reaſons on which that act proceeded, as expreſſed in its preamble, had confirmed him in the belief that, in acting as he had, he was not tranſgreſſing the boundaries preſcribed by the law, in ſuch caſe, the Court could not conſider him otherwiſe than as the object of a mitigated, if not a nominal ſentence. That the charge againſt the Defendant was not conſidered as an offence by the ſtatute of Edward VI. againſt foreſtalling was evident, becauſe that ſtatute, in enumerating the different articles of proviſion to which it applied, excluded the mention of hops. In the 20th of James I. the queſtion had ariſen, whether hops were a *victual*, at common law, and it was common law alone that it was pretended the Defendant had violated; after having been long argued in the courts below, it was referred to the Exchequer Chamber, and after it had been moſt maturely conſidered by the Twelve Judges, they had unanimouſly declared, that *hops were not a victual*, and that to engroſs them was not illegal.

Lord Kenyon aſked the Learned Counſel, what he ſaid to the ſtatute of Queen Anne 20, which declared, that no other bitter ſhould be uſed in brewing beer but hops?

Mr. Law replied, he was aware of that ſtatute, but he had to urge, that at a period ſubſequent to its paſſing, the Lord Chief Baron Comings, in his Digeſt, had adopted the law as laid down in the ſolemn deciſion of the Judges in the reign of King James; and he therefore argued in favour of the Defendant, upon this principle, that, ſuppoſing him to have taken ſuch authorities as his guides, could he be conſidered in the light of a wilful offender againſt the laws of England? Was it

juſt

juſt that the penal proviſions of the law ſhould be applied to a perſon whoſe conduct had been authoriſed by the opinions of the Judges of the land? Thus ſtood the ſituation of the Defendant, upon the ancient law. He ſhould now comment upon the ſtatute of 12 Geo. III. a ſtatute enacted under the auſpices of the moſt eminent Legiſlators of that day, aſſiſted by the information of all the County Members. A Committee of the Houſe of Commons, after the moſt attentive conſideration of the ſubject, adopted a reſolution to the effect, that it was the opinion of the Committee, that the ſeveral laws relating to badgers, foreſtallers, engroſſers, and regrators, were injurious, by preventing the free traffic of corn, and thereby encreaſing the price of that article, and that a bill ſhould be brought in to remedy the evil.—Here then was a ſolemn declaration that the law was the evil, and not the practice. In conſequence of this reſolution, a bill was brought in, which, after reciting that the laws againſt foreſtalling, by preventing the free trade, had enhanced the price of proviſions, particularly in the cities of London and Weſtminſter, repealed the greater part of the ancient ſtatutes. Mr. Law here commented at ſome length on this ſtatute, and with great ability pointed out its policy. The old laws upon the ſubject, he ſaid, if enforced, muſt be productive of the moſt calamitous effects; the capital in that caſe could not be ſupplied two days; there would not be one then in court to hear judgment pronounced. To talk of preventing foreſtalling was abſurd, they were all foreſtallers, they lived by foreſtalling, and were daily fed by its produce. That the operation of the act was to aboliſh all theſe penal ſtatutes, many caſes, as well as arguments, might be adduced to prove. In Williams *q. t. v.* Watkins, which was an action brought upon the 25th of Edward III. for foreſtalling cattle going to Smithfield market, Lord Chief Juſtice Eyre gave it as his opinion, that there was no ſuch offence, and the Plaintiff was nonſuited. When written recorded laws then had been abrogated by this act, could it be maintained that it left in force uncertain traditionary laws which were ſuppoſed to have exiſted? Before that venerable Judge Lord Mansfield, it had been impliedly decided, that the practice in queſtion was not illegal. He had compelled a fore-hand bargain for hops to be fulfilled; but the maker of this bargain was beyond

all doubt an ingroſſer, and had ingroſſing this article been contrary to law the contract was void. If then, ſaid the Learned Counſel, Mr. Waddington has erred, he has erred with a Roll and a Cumming, with a Burke and a Saville, and an Eyre and a Mansfield, with the twelve Judges of England, and with the Parliament of Great-Britain. Under theſe circumſtances he preſented him before the Court, not as a perſon who was to be dealt with as if he had committed a crime, but as one who, if he had offended againſt the laws through ignorance, would be hardly dealt by if he received more than a nominal puniſhment.

Mr. Danſey followed on the ſame ſide. After being told by Lord Kenyon (upon ſaying that he was now precluded from moving an arreſt of judgment) that he was at liberty to do ſo, as, in the words of wiſdom ſpoken by Lord Mansfield, the Court will in no caſe paſs ſentence on the innocent—he attempted to prove that Mr. Waddington had not violated the ſtatutes againſt ingroſſing, even ſuppoſing them to be in force. Ingroſſing was buying in groſs to ſell in groſs; but it did not appear here that theſe hops were not all to be ſold by retail. Again, what quantity conſtitutes ingroſſing? —Surely he could not be an ingroſſer of any article who left plenty of it for others. But the Defendant had purchaſed only a thouſand pockets; and could that have any effects upon Worceſterſhire, far leſs upon England?

Lord Kenyon aſked, whether there could not be ten ingroſſers in one market? yet each at the utmoſt could not buy more than one-tenth of what was expoſed to ſale.

Mr. Danſey conceived it muſt be proved in every inſtance that the act has been againſt the weal of the realm, and the intereſt of the King's people. Here it had not been proved that Mr. Waddington had occaſioned the leaſt miſchief. Had the defendant acted as if he thought the law was againſt him? on the contrary, he had, during the whole of his proceedings at Worceſter, acted preciſely like a man who was unconſcious he was offending. Was it to be ſaid, there ſhould be no ſuch a character as a middle-man between the grower and the conſumer. Sure he was, if the middle-man were to be annihilated, the country would never be ſupplied with proviſions; it could receive the benefit only of ſuch articles

ticles as were of local growth. The conduct of the Defendant had been that of a man who did not wiſh to conceal what he was doing, He contended that the information itſelf was defective, in not alledging the rumours circulated by the Defendant to have been falſe. It was ſtated that he had ſpread rumours to enhance the price of the article; now nothing could be more inconceivable, than that a man who intended to buy ſhould propagate rumours of a tendency to increaſe the price of what he intended to purchaſe.

Mr. Wigley dwelt upon the caution and deliberation with which the 12th of Geo. III. was paſſed, in oppoſition to thoſe who ſaid it had been enacted without reflection or foreſight. The Houſe of Commons came to the reſolution on which it was founded in 1767, and the act did not paſs till 1772. Middle-men, neceſſary in all branches of commerce, were more particularly neceſſary, he contended, in the commerce of hops, an article univerſally uſed, but produced but in a very few places.—How elſe were they to be diſtributed over the country? How were the wants of ſome diſtricts to be ſupplied from the ſuperfluities of others; Mr. W. had therefore neither violated the law nor injured the community.

Mr. Eſte argued with a conſiderable degree of ingenuity in favour of the doctrine, that ingroſſing is no longer an offence at law. The 12th Geo. III. declared all the laws againſt it to be null and void, therefore, thoſe were abrogated that it did not mention as well as thoſe that it did. Acts of Parliament were to be conſidered to be as operative as poſſible. Laws were to be expounded according to the intention of the framers.—Now the reſolution upon which this act was founded, declared *the whole ſyſtem to be impolitic, unjuſt, and miſchievous.*

Lord Kenyon.—"Theſe things may ſometimes have weight, but we are not bound to conſider the opinions of one Houſe, but the Acts of both."

Mr. Eſte ſaid, the ſame ſentiments were repeated in the preamble, which muſt be allowed to be binding.

After Mr. Eſte had enlarged upon this topic at conſiderable length, Mr. Waddington was told that if he wiſhed himſelf to ſpeak in his defence, now was the proper time.

Mr.

Mr. Waddington then addreſſed the Court; and, among other things, obſerved, that he ſhould pay that moſt reſpectable Court a very ill compliment if he were to addreſs them at length on the aukward ſituation in which he then ſtood; but he was ſo thoroughly convinced, from the ſolemn oath their Lordſhips had taken when they entered on their high and exalted ſituation, that they could not poſſibly inflict on him any other than a nominal puniſhment—he was ſo thoroughly convinced that they would not annihilate the commerce of the country, and the beſt reſources of the country, and of its proſperity, by inflicting any ſevere puniſhment upon him, that he ſhould take up very little of their time. God forbid that he ſhould pray the Court in mitigation of puniſhment, becauſe, if he were, he ſhould admit, that which he did not admit for a moment, that the Court could take cognizance agreeably to the 12th Geo. III. and the faith of the Britiſh nation—that the Court could take cognizance of commerce. Every individual had a right to act *prima facie* on the general underſtood ſtate of the law in this kingdom, and if he did that, he could not be brought forward to be puniſhed on any dormant Acts, called the Common Law. What little reading commercial men had, was confined to the general Acts of Parliament. They had neither time nor opportunity to dive into the Common Law of the kingdom, though he readily admitted that it was the baſis of every thing excellent in this Conſtitution: and as a general obſervation, it was to be deplored that commercial men had not more leiſure to examine into the baſis of the Conſtitution, and of the bleſſings that we in this country derived from it. As a commercial man, he conceived he ſtood there for the whole commercial world, and he could not admit for a moment that the commercial world could be taken by ſurpriſe, and puniſhed without a clear and explicit law, which he that runs might read. He knew their Lordſhips entertained all due reſpect for the commercial intereſt of the country, and he hoped they would not be biaſſed by any opinions on the other ſide, that would probably be urged with great abilities. It was abſolutely eſſential to the beſt intereſts of the commerce of the country, that the laws on this ſubject ſhould be clear and explicit. For the laſt ten months he and his family had been in the utmoſt diſtreſs. He had been 28 years a commercial

commercial man; his conduct he hoped during all that period had been tolerably correct; and when he retired into Kent, he had the approbation of the greateſt number of the commercial men of the City of London. Mr. W. ſaid he had nothing more to add.

Mr. Erſkine, leading Counſel for the proſecution, began with ſaying, that it was rather hard for him to be obliged to argue at the ſame time againſt a new trial, againſt an arreſt of judgment, and againſt the infliction of ſlight puniſhment. He complained more however of being deſired to go on, with rats and mice, to diſcover the law of the land among the Journals of the Houſe of Commons. It would not be convenient for the Defendant to ſtand committed till he made the ſearch. But fortunately it was not neceſſary, for to the Statute Book alone was he to look for information. If the Defendant had followed the opinion of the Twelve Judges—if he was the champion of the freedom of Britiſh commerce—if he had thought himſelf at liberty to ingroſs hops from reading Roll's Abridgment, or Croke Charles, God forbid that he ſhould receive the ſlighteſt puniſhment—he prayed to God that he might not. But to judge of his conduct it was neceſſary to look at the record, and ſee upon what charges he had been found guilty by a jury of his country. Mr. Erſkine having gone over the circumſtances of the trial with ſome minuteneſs, ſaid, that as at this awful and alarming criſis the Legiſlature was aſſembled, he would not foreſtall their deciſions, by canvaſſing the expediency of laying certain reſtrictions upon commerce; but he muſt reſcue the Legiſlature from the calumny of having not only ſwept away all the common and ſtatute law, but even of ſanctioning ſuch tranſactions. Thoſe perſons little underſtood the principles upon which a Britiſh Legiſlature acted, who ſuppoſed, that, under the name of a free trade, they meant to ſanction all the practices of men whoſe object was to benefit themſelves at the expence of the country. Every man certainly had a right to the enjoyment of his property, but while the law protected it, it alſo directed the uſe of it; he would conſider whether what the Defendant had done was in the courſe of a fair trade. Hops, he contended, were more eaſily ingroſſed than any other commodity, and the commerce in the article required to be more ſtrictly regulated. It was of no conſequence whether hops were

victuals or not, they were merchandize, and that was enough. The Defendant could not be ignorant of the criminality of his conduct, as a profecution had been commenced againſt him for malpractices in another quarter, and he himſelf mentioned that at Worceſter. His conduct had been moſt immoral and prejudicial to the country. If a man with a large ſtock of wheat, wiſhing to prey upon the poor, is afraid of the market falling, and keeps it up by falſe reports, is he innocent in the eye of the law, or of reaſon, of God or of man? It had been ſtated, forſooth, that there were no combinations exiſting, and that the fear of them was chimerical. He could only ſay, that during the vacation he had been repeatedly conſulted upon whether theſe practices were ſafe; and though he did not know the names of thoſe who conſulted him, he muſt ſuppoſe that their ſtatements were juſt, as they paid a valuable conſideration for having his opinion thereon.—Mr. Erſkine concluded by reminding his Lordſhip of the neceſſity of *putting an end* to ſuch practices, and that the ſureſt way of doing that was by puniſhing thoſe who had been convicted of them.

Mr. Garrow ſaid his only inducement to ſpeak a few words on this occaſion, was that he might ſhare the odium incurred by this proſecution with his Learned Friend. He thought it unjuſt to attribute miſchief to ſuch proſecutions, and he denied that they would be inexpedient, though they ſhould produce miſchief. Judges and advocates had a right to do and ſay what their conſcience dictates, and if what they do ſay excites fermentation, they are not to be blamed, but thoſe who by their miſconduct render neceſſary the interference of Courts of Juſtice. He then expatiated with great warmth upon the enormity of Mr. Waddington's offence. He had been found guilty of offering to raiſe the price of hops every market day, and of uttering a fervent wiſh that they might ſoon be at 20l. a pocket. This was the repreſentative of the mercantile world, and the champion of fair dealing! Was there no medium between this and compelling the farmer to come from Cheſhire to London to ſell his cheeſe? If to ſtarve the public had been his object, if he had wiſhed to excite diſcontent and diſaffection, he could not have gone more judiciouſly to work. On theſe, and many other accounts, Mr. Garrow contended that the puniſhment, inſtead of nominal, ſhould be exemplary.

Mr.

Mr. Gibbs adduced ſeveral ingenious arguments to prove that the 12th of Geo. III. had repealed only thoſe Acts which it enumerates. There was, he ſaid, an Act paſt in the 31ſt of the King, to allow the laying up of corn in granaries; but if the 12th of Geo. III. had had the effect alledged, this Statute was nugatory. He had no doubt that ingroſſing was a crime at common law. There were few caſes prior to the time of Edward VI. but the text writers were decided upon the point. He was not arguing upon the expediency of the practice, he begged he might be underſtood, but its legality. There was a great diſtinction between from ignorance doing a thing harmleſs in itſelf that was forbidden, and doing what muſt certainly be miſchievous on that account.—Mr. Waddington perhaps might not know that he was liable to be puniſhed for his conduct, and if he had known that, might have refrained from ſuch practices, but he had on this account not the leaſt title to mercy.

Mr. Mills, *Mr. Manly*, *Mr. Scott*, and four or five other gentlemen followed on the ſame ſide. When they had delivered their ſentiments,

Lord Kenyon obſerved, that it was proper he ſhould ſay a few words in this Caſe at the preſent moment. With the Defendant, Mr. Waddington, he was wholly unacquainted, and, to the beſt of his knowledge, he never till this day ſaw him. With ſome of the relations of the Defendant, his Lordſhip ſaid he was acquainted, and he had a reſpect for them.

He was very ſorry that ſome things had been done; he hoped not by the Defendant, but certainly appearances were againſt him—he alluded to ſome publication which had taken place upon the ſubject of this Trial, and that publication bore the name of Mr. Waddington. His Lordſhip ſaid, he need not add, that whatever the contents of this publication might be, they ſhould have no weight with him, nor with the other Judges, in the conſideration of the judgment they might give upon this Caſe.—The publication to which he alluded was called "A Summary of the Trial," and ſubſcribed with the name of the Defendant, Mr. Waddington. He was ſorry that in the obſervations upon this trial not only the living Judges of t he land had been libelled, but that it had been thought proper to viſit the grave of one of the moſt illuſtrious and diſtinguiſhed characters that ever filled the page

of

of hiſtory. He deplored that it ſhould have been thought neceſſary to pollute the grave, and inſult the aſhes, of ſo great and good a man as Lord Mansfield. If a temple of fame ſhould hereafter be erected, whether of the frail materials formed by mortal hands, or conſtructed from the imagination of the poet, it would not contain alone the ſplendid names of Epaminondas, Timoleon, or Marcus Aurelius, but the name of that moſt illuſtrious Judge would occupy a prominent ſituation. Why ſhould the pages of a moſt calumnious hiſtory have been reprinted for the purpoſe of traducing the memory of the dead? however it made no part of this caſe; he hoped the public would not think ſo ill of him as to ſuppoſe any thing contained in the pamphlet he alluded to could in the leaſt bias him againſt the defendant.—He had merely mentioned it as a circumſtance that merited reprehenſion. The learned Counſel had apologiſed for not having been prepared. Such an apology was unneceſſary. To ſuppoſe they had not thoroughly looked into the ſubject that concerned their client, was to ſuppoſe what could not exiſt with reſpect to ſuch honourable men. No doubt they had ranſacked the whole of the caſes that were to be found. The calamities of the preſent times, and the viſitation of all-gracious Providence, who directed every thing for the wiſeſt purpoſes, were no doubt eventually for the good of mankind. If we were permitted to explore the Heaven of Heavens, we ſhould find that every thing that was done was for the beſt. But the public might be ſure that the benignant Monarch on the Throne and the Legiſlature of the country were equally attentive to the calamities with which it was viſited. The rich and the poor, all ranks might be aſſured, that whatever human wiſdom could do would be done. When new laws ſhould be made it would be the duty of Judges to give them effect, but at preſent they had no guides but thoſe which were in exiſtence. He wiſhed to ſpeak guardedly: with regard to the middle men he had ſaid nothing further than that Mr. Law was not warranted in ſuppoſing he was adverſe to the exiſtence of ſuch a character.

His Lordſhip then obſerved, that this Metropolis was ſaid to be in a ſtate which expoſed it to famine, if no ſuch character as that of a Middleman was allowed to practiſe. This Metropolis was ſupported from week to week, or perhaps, from day to day, or perhaps, in ſome things for ſhorter periods

periods ſtill. He did not affect to know much of theſe things, but it did appear to him that if any man or number of men were to be allowed to purchaſe as much as they pleaſed, or their large purſe could pay for, that this Metropolis itſelf would be expoſed to extreme danger, if not to abſolute famine. Suppoſe, for inſtance, a great quantity of Corn intended to ſupport the town for a great length of time with bread, were to come to the quays, and the owners came with their ſamples to Mark-lane, intending there to expoſe the commodity to fair ſale in open market, and ſuppoſe that many rich men (and this was not at all impoſſible) were to go down to the river ſide, and for the purpoſe of bringing that Corn to a very high, or indeed almoſt any price they pleaſed, they were to buy every grain of it, and that with a view beforehand, to raiſe the price beyond what the ſtate and condition of the common people could poſſibly reach—What was to be ſaid to that? What would be the effect of it? This was neither an impoſſible nor even a caſe of extravagant ſuppoſition—and to ſay the truth, it did appear to him, in the view he had, either of Law, or of Morality, or of Religion, a very heinous offence. Thoſe who attended the ſervice of their Church on Sunday laſt, muſt have heard, or if prevented by illneſs, muſt have read, in the language of the wiſe King of Iſrael, that "he who with-holdeth Corn from the People, ſhall be curſed by the People; but that their bleſſing ſhall be on him that giveth Corn, &c." He did not affect to quote the preciſe words, but this was the ſenſe; and by this we were told by the wiſeſt of men, what Religion enjoined, and what Humanity required. He thanked God that all the Judges of the Land, with one voice ſaid, that this practice of with-holding the Neceſſaries of Life was contrary to the Law of England.

One thing had been ſtated a little higher than the truth of argument would bear, namely, that it had, in former times, been declared by all the Judges, that *Hop* was not a *Victual.* It was a captivating argument to Judges ſitting in a Court of Law, whatever it might be, if it had the authority which muſt belong to the opinion of men of ſo much wiſdom as the Judges of England collectively had always poſſeſſed, a Court would proceed with but trembling ſteps at any time againſt an opinion ſo declared; but really this was not a fair way of treating this

ſubject at this day; for it was not very long ago when Hop was looked upon as a *poiſonous weed*, and, as ſuch, the uſe of it was prohibited; and whether it be indigenous or exotic was perhaps not quite ſettled by Natural Hiſtorians in this country. It was therefore in early times by no means conſidered as a neceſſary of life, but it was now ſo much ſo, that the common beverage of the people of this country could not be made without it; ſo well perſuaded of this were the inhabitants of the county of Kent, that they were all up, as it were, in arms, when *Quaſſia* was received among the *Materia Medica* as a wholeſome bitter, which it was ſuppoſed might ſupply the place of Hops. He ſpoke this, not with a view of giving an opinion upon the qualities of plants or herbs, or any other productions of Nature, nor of any improvement of art upon them; he was not ſo vain as to ſuppoſe himſelf qualified to form any opinion on ſuch ſubjects, but he ſtated this to ſhew that a thing may be "*Victual*" now, which was not ſo in antient times, and therefore the opinions of Judges upon ſuch ſubjects muſt be as liable to change, as the materials to which they referred might be diſcovered to have qualities which were then unknown. Beſides if it was to be admitted that *Hop* was not at this hour to be defined by Law as "*Victual*," but only as an *Ingredient* in "Victual," did it therefore follow that it was not a *Neceſſary of Life?* What would be ſaid, for inſtance, of *Salt?* If Lord Mansfield, degraded as he was by the publication he alluded to, had any knowledge, aſſiſted as he was by Mr. Juſtice Wilmot. Mr. Juſtice Denniſon, and Mr. Juſtice Foſter, on a caſe from Droitwich, and there were ſix or ſeven others like it, if they had any knowledge of the matter, Salt was a Neceſſary of Life; he ſaid it was emphatically a Neceſſary of Life—So were Hops, becauſe the bitter quality they have, are neceſſary in the compoſition of beer, which is now the common beverage of the people of this Country; and God forbid, that theſe things, which he has given us to be diffuſed and as generally divided among his creatures according to their wants, as may be, for the common benefit of all, ſhould be hoarded up by a few, and rendered inacceſſible to the many.

His Lordſhip ſaid he would not now enter into the ſpirit of the book of Dr. Adam Smith, on the Wealth of Nations, he would merely ſay, that he had pamphlets put

put into his hands almoſt every hour, ſome of which, although no name appeared, were written by ſome of the beſt public, as well as private, characters in this country: for there were always, or at leaſt generally, ſome means of knowing the Authors of theſe works; one of them was dedicated to Lord Spencer, it was written in a ſuperior tone and with great authority—Whether he acceded to its contents was no queſtion of any intereſt to any, perhaps, but himſelf. There were others of an equal authority, of a directly contrary opinion, and, perhaps, this might be ſaid without hazard of contradiction, that thoſe who have read and ſtudied much, and who afterwards mix with the affairs of buſy life, and ſpeak from facts, and make obſervations on what they really know, are as likely at leaſt to be in the right, as men who write upon theories and ſpeculations of their own in their cloſets. He would not call Dr. Adam Smith a verboſe writer, but certainly, there were ſome points moſt laboriouſly ſtated and proved by him, which were known long, long, before his book was written or could be thought of, at leaſt by him.

But what was the queſtion here, what was the charge againſt the Defendant? That he went down to a certain part of the Country to deal for a Neceſſary of Life, and the queſtion was, whether he acted fairly, according to the free ſpirit of trade? Not whether thoſe who wanted three or four pounds weight of the article might think he affected the price of it; but whether this mode of conduct was to be conſidered as fair in this Country? Whether this is to be endured, when we ſee what effect it has, and cannot but have on the moſt induſtrious and therefore moſt uſeful ranks of life, and moſt valuable parts of the Community in which we live.—"I aſſume no credit to myſelf," ſaid his Lordſhip, "when I look to the intereſts of this part of the Community, all of us look to that intereſt—all of us ought to look to it—we cannot forget it without forgetting ourſelves, for our intereſt is intimately connected with their well-being, and therefore no honeſt man ought ever to be ſuſpected of attempting to flatter them when he talks of their intereſt. That intereſt is materially injured by practices of this kind, and therefore it ought to be checked effectually." How ſtand the facts in this caſe? We find the Defendant in the Market, he finds the price of the Article is 12l. 10s.—

10s.—He adviſes the Growers not to ſell.—He tells them the Article will be higher.—It riſes to 13l. 10s. and 15l. He then expreſſes a with and a hope that it may riſe to 20l. the hundred weight—What effect is this likely to have on the minds of the Planters of Hops?—They are men—they are ſubject to the paſſions of men, of which ſelf-love is one. There have indeed been men whoſe Public Virtue was ſuch that they never looked at their own intereſt, but were ready, at all times, to ſacrifice all to the Public Good; who have, indeed, themſelves ruſhed into the gulph in order to fill it up and ſave their Country from deſtruction. But although there have been ſuch men, Hiſtory inſtructs us to look upon them as rare productions; and teaches us to conclude, that the maſs of mankind will be guided by conſiderations of ſelf-intereſt in the common affairs of life, without being very heedful of the effect it may have on the Country at large. Theſe men come to Market with their Commodity, to meet the fair Price of that Market; a man comes to them who has been twenty years in trade, who has done, he ſays, great benefit to Society, with a fortune, I dare ſay, well earned; and he raiſes the Price of this Neceſſary of Life by his own act, from 12l. to 15l. Thus it ſtands on the face of the Record now before us: Is this fair in Society? I cannot believe that any honeſt man in this world, will lay his hand upon his heart, and ſay, "this is right."—The queſtion, in this view of it, ſtands between Mr. Waddington and his own conſcience; if that conſcience acquits him, he may be acquitted at the Judgment Seat of God; but we mortals are to judge of men by their overt-acts, and muſt take them to mean what they plainly indicate to our ſenſes; upon which I am bound to ſay he acts as a diſ-ſocial being, and mainly againſt the good of the Community of which he is a member. It does therefore appear to me that the Law has been tranſgreſſed by Mr. Waddington in this caſe. I have been liſtening with great attention, as I ought to do, to every thing that has been urged by the Defendant's Counſel, but I am not only unable to yield to their arguments, but I can hardly perſuade myſelf they will bear looking at, not from want of ability in thoſe who urged them, for none more able, but from the nature of the caſe. The Journals of a Houſe of Parliament have been quoted. I remember once a Learned Gentleman ſaid upon a caſe in which he had occaſion

caſion to ſpeak of them, he had not brought with him the 40 folio volumes, but that he had them in his head.—I own I neither have, nor wiſh to have, the contents of any ſuch books in my head, I wiſh to ſpeak reſpectful of either Houſe of Parliament, but ſitting here as a Judge I know nothing of them, until the King adds to them "*Le Roi le vent.*" The Public may be well aſſured, that whatever His Majeſty, as the Father of his People, can do, will be done. Whatever human wiſdom can do to alleviate the preſſure which is now felt will be done in due ſeaſon, and without more delay than is unavoidable. Have the Counſel for the Proſecution any thing to pray?"

Mr. Erſkine ſaid that he did not pray any thing againſt the Defendant, but he had inſtructions not to forego any of the Rules in Proſecutions.

Lord Kenyon then ſaid, there was but one courſe which the Court had power to follow, and that was, to order that the Defendant do now ſtand committed to the priſon of this Court.

The Defendant's Counſel ſubmitted, that as the Counſel for the Crown prayed nothing, the Court was not bound to commit the Defendant.

Mr. Erſkine ſaid he preſſed nothing. The gentleman on the floor was his particular acquaintance; and his brother was in Court, for whom he had the greateſt regard. He prayed nothing, but he would not interpoſe an exception in favour of the Defendant as Counſel for the Proſecution.

Lord Kenyon—"A good many years ago I was Counſel for a man of great wit and learning, but what endeared him more to me than his being a man of wit and learning was, that he was an old ſchool-fellow. He was proſecuted and came up for judgment. I preſſed that he might not be committed. Lord Mansfield ſaid, 'if the other ſide will not conſent, we cannot do otherwiſe.'

It was here obſerved, on the part of the Proſecution, that the law was equally uncertain in the caſes of Mr. Atkinſon and Mr. Eyllet, and yet they were committed.

Lord Kenyon.—I hope no man living will conſider this proceeding as ſevere: he muſt be committed to the priſon of this Court, and be brought up again the laſt day of the term.

Jan. 28, 1801.

Samuel Ferrand Waddington was brought into Court to receive judgment. Juſt as Mr. Juſtice Groſe was beginning to addreſs him, the Defendant ſaid, he humbly conceived he was entitled to ſpeak before the court proceeded to judgment.

Lord Kenyon ſaid, he had already been heard, and the Court, after having received every information upon the ſubject, had pauſed upon that judgment it was now prepared to give. If the defendant wiſhed to add any thing to what he had already ſaid, it might be neceſſary for the Court to commit him for another term, in order to conſider ſuch arguments as he ſhould offer.

The Defendant ſaid, he had rather ſubmit to that inconvenience, than not be heard. He conſidered it as an important national queſtion, which concerned the public as much as himſelf.

Lord Kenyon replied, that the Court had alſo conſidered it as a queſtion that deeply intereſted the public, and in the moſt favourable point of view for the Defendant. It was for the breach of the law, as it affected the public, he was now called upon to receive judgment.

The Defendant proceeded to ſtate, that he conceived, that, though his name was made uſe of in this proſecution, it had been inſtituted more with a view to try the effect of the ſtatute 12 Geo. III. than of puniſhing him individually. He entered into a ſtatement of the average produce of hops for the laſt three years, the period in which he had been engaged in the trade; and the reſult warranted him in aſſerting, that the high prices were not to be imputed to him, but ſolely to the hand of the Almighty. He obſerved, that it had been proved on his trial, that hops had been dearer in the year 1788, than ſince he came into the trade, and, during the laſt ſix months, they had become ſtill dearer, though he had not purchaſed any. He entreated the Court to pauſe before they pronounced ſentence upon him, inaſmuch as it was impoſſible any one could be paſſed that would not hereafter be diſcovered to have been founded on erroneous principles. He contended, that before-hand bargains had been in practice ever ſince hops had been known in the country, and that ſuch bargains were ſanctioned by the ſtatute of the 9th of Queen Anne. He truſted their Lordſhips would not think of puniſhing a man who, if he had erred, had done ſo through

through ignorance; it was impoſſible he ſhould have known he was offending againſt the laws of his country—he had merely adopted that ſyſtem of trade which he had found eſtabliſhed by long uſage, and he declared to God, that he believed his operations in the hop trade had greatly tended to reduce the price of the article.

Mr. Juſtice Groſe.—Samuel Ferrand Waddington, you are here to receive the ſentence of the Court upon a conviction of an information charging you with having put in practice divers methods tending to enhance the price of hops. Upon this charge you have been tried before a Special Jury of the city of Worceſter, who, after maturely weighing the evidence againſt you, have found you guilty. From that evidence it appears that you, a merchant living in Kent (a diſtant county), in the months of March and April laſt, went to the city of Worceſter, where a conſiderable market for the ſale of hops was held. That, on your arrival there, you found the ſtate of the market very ſlack, and the ſtock of hops conſiderably more than was ſufficient to anſwer the current demand of the market. It appears that the price of hops in the preceding January had been from 15l. to 16l. per cwt. and that the market price in the month of March was 13l. per cwt. You found the prices ſo low, that you thought fit to obſerve and ſtate in the market, that the low price of hops was owing to the proſecution againſt you. It alſo appears, that you aſſerted to the by-ſtanders, that the proſecution againſt you was dropped, and that, of courſe, the price of hops would riſe again. If it had been true, that the low price of hops was the conſequence of the proſecution againſt you, it was a proof ſuch proſecution was well founded; but nothing appears to ſhew, that the proſecution was dropped, and therefore your obſervation, that hops would riſe again in price, was not well founded; but, on the contrary, a falſehood. You further obſerved in the market, that the ſtock of the brewers was nearly exhauſted; that they muſt ſoon come to you, or to the hop-planters, for a ſupply; that in a ſhort time the price of that article muſt riſe to 20l. per cwt.; and that the planters might depend upon your aſſiſtance in enabling them to keep up the price. By this it appears you had a ſtock on hand, and that it was your intention to keep up the price, and aſſiſt others in doing ſo, till that commodity, which was at 13l. ſhould be raiſed to 20l. per cwt.

With

With this view, it appears, you contracted for 200 bags of hops, at the rate of 12l. 10s. and agreed to give an advance of 10s. upon every ſucceeding market for the ſame quantity, till the price ſhould amount to 15l. By theſe means you became purchaſer of 1-5th of the whole ſtock of the counties of Worceſter and Hereford, at a much greater price than it would otherwiſe have produced. In the preſent ſtate of paper credit, human nature could not have deviſed a more likely method than the one you adopted, in order to perſuade the dealers not to bring their hops to market, and this you have done in an extenſive market, like that of Worceſter, from which all the northern markets received their ſupply. From ſuch circumſtances, no man could help foreſeeing what the conſequences would be; and it cannot create the leaſt ſurpriſe that hops, which, it appears, were offered by a Mr. Green to Mr. Hodges for 13l. ſhould afterwards have been ſold for 15l. the price to which you raiſed the market. Upon this ſort of evidence the Jury have very properly found you guilty. It ſeems then that you, a merchant of credit and affluence, having a conſiderable ſtock of hops on hand of your own, left the county in which you reſided, and proceeded to Worceſter, not to buy or to ſell, but merely to ſpeculate how you might advance the market price—that to effect your intention, you declared to the ſellers the current price was too cheap, and by ſuch declarations, and purchaſes you made of one-fifth of the produce of two counties, raiſed the price of a falling market.

In reply to this charge, you ſay, firſt, that no ſentence ought to be pronounced againſt you; and, ſecondly, that if any ſentence is paſſed, it ought to be ſo light as not to carry with it any puniſhment.

With regard to the firſt point, it was fully conſidered upon the motion in arreſt of judgment, and the Court has given its anſwer; but, notwithſtanding that, if the Court now was ſenſible that, in juſtice to the country, no judgment ought to be pronounced, it would not heſitate to ſay ſo. With reſpect to the ſecond, when we recollect the precautions adopted by the wiſdom of our anceſtors, and thoſe which are contained in the ancient common law of the land, we cannot but conceive we ſhould be eſtabliſhing a moſt injurious precedent, were we, by our judgment, to infer that the man who has, by his practices, endeavoured to raiſe the price of an article neceſſary to the

the common beverage of the country, has not been guilty of a great crime. The ſtatute of 12th Geo. III. under which you ſeek to ſhelter yourſelf, never was intended to repeal thoſe laws framed for the benefit of the poor, and without the protection of which they cannot exiſt. In mitigation of puniſhment, the Court has been repeatedly and ſtrongly addreſſed on the ſubject of the freedom of trade, as if it were requiſite for the ſupport of the freedom of trade, that one man ſhould enhance the value of the neceſſaries of life, and prevent his fellow-ſubjects obtaining them at a fair market price. The freedom of trade, like the liberty of the preſs, is one thing—the abuſe of the freedom of trade, like the licentiouſneſs of the preſs, is another. God forbid this Court ſhould ever pronounce a ſentence ſubverſive of the freedom of trade or the liberty of the preſs; on the contrary, this Court has ever declared, that to violate the freedom of trade, by taking goods coming to market, or after they have reached the market, againſt the will of the owner, or for a leſs price than that for which he was willing to part with them, is a capital offence, puniſhable with the forfeiture of the offender's life. The law ſo far protects the freedom of trade, that it encourages thoſe who are bringing their goods to market, and puniſhes thoſe who violate their fair and free courſe of traffic. The ſame law that protects the rich againſt the violence of the poor, protects the poor againſt the avarice of the rich; and, therefore, the freedom of trade has, as it ought to have, its legal limits. No man is allowed to diſpoſe of his riches, to purchaſe what he pleaſes, or of whom he pleaſes, or where he pleaſes. It is well known there are certain goods which are contraband, that there are others which no perſon is allowed to purchaſe, and others again which none but thoſe who are authoriſed by law can trade in. It will eaſily be perceived, when I ſay this, that I allude to thoſe articles which conſtitute the excluſive traffic of the Eaſt India Company, ſuch as are prohibited by the revenue laws, and ſuch naval and military ſtores as have the King's mark upon them. In addition to theſe reſtrictions, the law has ever paid the greateſt attention to the neceſſaries of life, in order to guard againſt any undue advance in their price. In theſe reſpects, therefore, it appears the freedom of trade has its limits, and muſt be regulated by the law. Upon looking into the books of the law, we

think we find the offence charged in the information againſt you ſufficiently defined. But it has been obſerved on your part, that the ſtatutes of 3d and 4th of Edw. and the 5th and 6th of the ſame reign, were repealed by the 12th Geo. III. Admitting this, can it be ſuppoſed that foreſtalling, or regrating, or any other means by which a man may attempt to enhance the price of proviſions, has ceaſed to be an offence in the eye of the law? Such an argument ſuppoſes you to have read that ſtatute, and, taking it for granted you have, the obvious anſwer of the Court is, that you muſt be ſenſible the ſtatute, the benefit of which you claim, does not apply to this caſe. It does not ſay that ſuch acts as tend to increaſe the price of the neceſſaries of life ſhall not be conſidered as criminal. We conſider your crime as an offence at common law, and liable to certain penalties. This information is not exhibited for any offence contained in the ſtatutes repealed. The offence of which you have been convicted is the violation of the courſe of fair and honourable trade, which encourages every one to bring his goods to market, and offer them for ſale to the beſt bidder. By what you have done, you have created a fictitious ſcarcity, and the price of the commodity has been raiſed upon the public. I cannot but ſuppoſe, that what was ſaid at the bar, by the counſel for the proſecution, was true; that when you were conſidering the effect of the ſtatute 12th Geo. III. it muſt have ſuggeſted itſelf to a man of your underſtanding, that the Legiſlature of a great and populous country like this, could never have intended by that ſtatute to take from the lower claſſes of ſociety that ſecurity, which guarded them againſt the dreadful effects of the high price of proviſions, and by ſo doing, not only open the door, but throw out a temptation to the rich to oppreſs the poor man. Theſe arguments then you have urged, if duly conſidered, prove but little, eſpecially when it is underſtood that your attention muſt have been awakened by the firſt application for a criminal information againſt you, and that your ſubſequent offence was in defiance of the conſequences which you muſt have been aware awaited you.

The Court, having taken into conſideration the nature of your offence, and the period at which it was committed—reflecting alſo, that a precedent is called for, which may operate as an example to others, upon a ſubject that ſo

ſo materially concerns the public, and adverting at the ſame time to the impriſonment you have already ſuffered, doth order and adjudge, that you, Samuel Ferrand Waddington, do pay a fine to the King of five hundred pounds; that you be impriſoned in the King's Bench for the term of one month, and further until the fine is paid.

Feb. 6, 1801.

THE Defendant came into Court for the purpoſe of receiving its judgment on the conviction for foreſtalling hops, with intent to enhance the price, in the county of Kent.

Lord Kenyon reported the trial, which took place before his Lordſhip and a Special Jury, at the Sittings after the laſt Term, for the county of Middleſex.

Mr. Law, *Mr. Bond*, *Mr. Dauncy*, *Mr. Clifford*, and *Mr. Peake*, addreſſed the Court in behalf of the Defendant, and ſubmitted, that he ought to have only a nominal puniſhment. *Mr. Clifford* aſſured the Court that Mr. Waddington was determined to take the ſenſe of the Houſe of Lords on this caſe.

Mr. Waddington addreſſed the Bench alſo, in a ſpeech of conſiderable length, in which he juſtified his conduct in the purchaſe of hops, and maintained that the proſecution of him was a popular error, &c.; and that the practice would continue even though the Court ſhould ſend him beyond the Seas.

Mr. Erſkine, *Mr. Garrow*, *Mr. Gibbs*, and *Mr. Scott*, addreſſed the Court for the proſecution; after which it was ordered that the Defendant be brought up on Wedneſday next.

Feb. 11, 1801.

Mr. Juſtice Groſe proceeded to deliver the ſentence of the Court upon Mr. Waddington, upon the information on which he was convicted before Lord Kenyon and a Special Jury in Weſtminſter Hall, for ingroſſing hops, and perſuading thoſe who had large quantities of that article not to bring them to market, with intent to enhance the price of that commodity. The Learned Judge ſtated the ſubſtance of the charge and of that part of the evidence at the trial, whch ſet forth the declaration of the Defendant "that he was the moſt conſiderable owner, and ſhould in a month be able to command the market, when he would come up to London, and then he would compel

compel the brewers to come to his own price, and that hops ſhould not be ſold for leſs than 20l. the hundred weight." The Learned Judge then obſerved, that as this caſe was ſimilar to that on which the Defendant had already received the judgment of the Court, and on which he had taken occaſion to ſay what occurred to him on the law of the matter, it would be needleſs to enter much at large into commentary now. It was obvious, both by the caſe now before the Court and that of the caſe at Worceſter, that the Defendant had been purſuing an extenſive plan which he had formed for the purpoſe of moſt unfairly enhancing the price of the article of hops, and that in both caſes he was the proper object of puniſhment.

It had been contended, on behalf of the Defendant at the Bar, that he had been guilty of no crime. If it was in reality no crime, he perſonally rejoiced that the caſe was upon the Records of the Court, ſo that the error, if any error there was, of the Judges, might be corrected, and the Law might be promulgated from the higheſt authority; in the mean time it was fit alſo to be promulgated from authority,—that men who commit acts ſo injurious to the intereſts of ſociety, for the purpoſes of their own emolument, ſhould not be allowed to contend with ſucceſs, nor were the public to ſuppoſe that ſuch men were to be conſidered as doing nothing that was wrong. It has been contended likewiſe, that if this practice was a crime at all, it was moſt venial;—thoſe who thought they were innocent in themſelves, and who had no feeling for the diſtreſſes of others, becauſe they had no diſtreſs of their own, might ſay this, and they might be permitted ſo to argue, but whatever they might do or think, or rather might ſay, thoſe who can feel for the miſery of the lower claſſes of human beings, would think and ſpeak differently; for they would ſee how important it is to ſociety, that thoſe who abound in riches, ſhall not be allowed to employ them to the oppreſſion of the poor, for the gratification of their own avarice. Far be it from the Court to impute to the Defendant that which he ſaid was the act of the Almighty. No; it was not imputed to the Defendant, that the ſeaſon had been inauſpicious, or that the growth of hops was not abundant, but it was imputed to him, that he engroſſed unfairly the

the article, that he perſuaded others to keep it back from the market in the common way of trade, with a view to enhance the price of it, which could only have the operation of creating an artificial ſcarcity, if a real one did not exiſt, or of increaſing it if it did—the conſequence of which practice, if ſuffered to continue, every wife and good man muſt tremble to foreſee; for unavailing to mankind would it be, although the Almighty ſhould beſtow an abundant harveſt, if by the gambling tricks, or other artifices of the rich, the price of things were to become ſo high as that the poor could not purchaſe the neceſſaries of life.

The novelty of the Defendant's caſe had ariſen by the long diſuſe of the force of the Common Law, and the puniſhment not being pointed out by any exiſting Statute, had cauſed the Court to pauſe before they made up their minds upon the judgment to be pronounced on the former caſe, and on which the Court had awarded puniſhment; and the impriſonment he had undergone, previous to that judgment had not been overlooked, and the Court had thought they adopted a line of moderation which was always an ingredient in the due adminiſtration of juſtice. This was a crime, the which if there was no check to it, would be moſt alarming in the preſent ſtate of ſociety. The Court had deliberated alſo on the ſentence fit to be pronounced in the preſent caſe, which was moſt important, and which involved points that were moſt momentous; but neither the wiſhes of the Court to protect thoſe who could not otherwiſe protect themſelves, nor the miſchievous quality of the crime itſelf, ſhould tranſport the Judges to any reſentment which might lead them to the infliction of a puniſhment that was immoderate; but it was the aim, and the only aim of the Court, as it was its duty, while they tempered juſtice with mercy to the individual, to have a due regard to the intereſts of the public; they were therefore, in the adminiſtration of criminal juſtice, bound to paſs ſuch a ſentence as in their opinion would deter others from the commiſſion of the like offence. The Court therefore order, That for this offence the Defendant do pay a fine of 500l. and that he be impriſoned in the King's Bench for three calendar months, to be computed from the expiration of his former ſentence; and that he be further impriſoned until ſuch fine be paid.

THE KING v. ARIS.

THE leading Counſel for the Defendant ſhewed cauſe why a Criminal Information ſhould not be filed againſt Mr. Aris, who had been charged with cruelty towards a perſon of the name of John Heron, while in his cuſtody. The Counſel ſaid, it would require eagle's eyes to diſcover what the offence was, and one great object of that proſecution ſeemed to be, to ſhew that the houſe was ill conſtructed—badly built—that the proviſions were not ſufficient, and that the whole priſon was groſsly miſmanaged. Although near 1300 priſoners came into that jail in the courſe of a year, yet during the whole time the Defendant had been Governor of that place, whatever had been ſtated out of Court, yet this Proſecutor was the only perſon who had been found to come into a court of juſtice with a regular complaint. The learned Counſel then moved, that the affidavits on both ſides be read.

The firſt was that of John Heron, the Proſecutor, who ſtated, that he had been twice impriſoned in Cold Bath Fields,—the firſt time in June 1798, and the ſecond time in March 1799. The firſt time he came there, he ſtated that he was put into a dark cell, heavily ironed; that he had nothing but damp ſtraw to lie upon, and only a rug full of vermin to cover him; that he had only one pound of bread per day, and two draughts of water; and that he was not permitted to ſee day-light except about five minutes every morning, when he waſhed his face and hands; that he had no opportunity of ſeeing his wife but through two iron grates, at the diſtance of eight feet from her; that he was kept in that ſituation for eight days, and then dragged to Bow-ſtreet on foot, loaded with heavy irons, &c. The ſecond time he was brought there, he was put into a light cell, about ſix feet ſquare, of ſtone and brick; that the weather was extremely cold, and that the ſnow and wet drifted in upon him, in conſequence of which he had almoſt periſhed. He was there at that time ſeven weeks and three days, and a diſtinction was made between the firſt three weeks and the remainder of that time, when, he admitted, that he was treated with more humanity, and received his pay as a ſoldier. He received 13s. 4d. a week.

Joel Rance, who had been a turnkey of this jail, but who

who is now a coachman, made an affidavit in confirmation of Heron's, as alſo Charles O'Neil, John Bone, and Joſeph Henſcoe.

On the part of the Defendant were next read, the affidavits of Thomas Aris himſelf; of James Aris, the ſtore-keeper; of Thomas Nicholſon, the clerk of the priſon; of Joſeph Pollard, the cook; and of Edward Ruſſel and Nathaniel Oliver, two turnkeys. Theſe perſons completely negatived every charge that had been brought againſt the Governor. Stephen Ryley, John Rivett, and John Baldery, who were no way connected with the jail, made affidavits that went ſtrongly in corroboration of thoſe made by the Defendant, and the other perſons connected with the priſon. Joſeph Hughes and Charles Champs, who were mariners, and belonged to the Enterprize, and who had been confined in Cold Bath Fields for mutiny, alſo made affidavits.

Mr. Scott objected to their being read; but his objection was over-ruled.

After all the affidavits on both ſides were read, *Mr. Marryat* was heard againſt the Rule, and *Mr. Scott* in ſupport of it.

Lord Kenyon obſerved, that in adminiſtering the criminal juſtice of the country, it became the Court to be extremely jealous of the conduct of keepers of priſons, becauſe, if they abuſed their power, priſoners had nobody immediately to appeal to, and miſchief might be done without remedy; and therefore the criminal law of the country impended over theſe perſons, and they knew the ſanctions of puniſhment would follow, if they violated the line of their duty. That criminal juſtice ſhould be adminiſtered—that there ſhould be places of confinement, one was ſorry for it, but properly ſuperintended, he took it for granted was abſolutely neceſſary. His Lordſhip ſaid, he held that proſecution by information, was a neceſſary mode of proſecuting for the benefit of the public. But becauſe that mode of proſecution was expenſive to parties, the Court had impoſed certain rules on itſelf; and where the caſe had been long delayed, where the parties had ſuffered two terms to elapſe without making any complaint, the Court ſaid they would not grant a Rule, but remitted the party to a Grand Jury, becauſe the delay ſhewed the caſe did not call for that mode of proſecution to diſpel immediate danger to the public. The ill treatment

ment here complained of, was ſuppoſed to be committed upwards of three years ago, and if all the facts had been ſtated—he did not blame Mr. Scott for not ſtating them at the time, as Counſel could only follow their inſtructions —but if all the circumſtances had been ſtated, the Court, without breaking through all the Rules it had laid down to itſelf, could not have liſtened to the application at all. This man was at full liberty from the 12th of Auguſt 1798 to the 12th of March 1799, and therefore, if he had had any complaint he might have made it. Nay, he might have made it in jail, to the viſiting Magiſtrates, the Grand Jury, &c. and they would and muſt have liſtened to it, if it had any foundation. This was a caſe which much imported the public. It was of the laſt importance, as he before ſaid, that the keepers of priſons ſhould be narrowly watched, and puniſhed if guilty of any violation of the law. On the other hand, it was neceſſary that the public ſhould be diſabuſed, if they had been abuſed. For *fiat juſtitia, ruat cœlum.* It was neceſſary that a man, who appeared innocent, ſhould not be run down by clamour. And after weighing that caſe with an anxiety which could not be exceded, he ſaid not only was there no caſe made out to grant the information, but there was no caſe of criminality—not one ſingle article made out againſt him. Lord Kenyon here paid a high compliment to Dr. Glaſſe, and Mr. Mainwaring, the Member of the County. He ſaid he had known the one of theſe Gentlemen for thirty years, and the other for a great number, and more honourable men than they he did not know. There were many others to be named with them; but men more honourable, more inclined to adminiſter juſtice, more inclined beneficially to aſſiſt with their protection, and purſes too, thoſe who called on them for aſſiſtance, did not exiſt among the community of this kingdom. His Lordſhip concluded with obſerving, that this was a ſhameful proſecution in all its parts and members, and when he ſaid that, he did not apply it to Counſel, who could only follow their inſtructions. His Lordſhip therefore thought the Rule ought to be diſcharged, with coſts.

The other Judges were of the ſame opinion.—Rule diſcharged, with coſts.

E. E. F. M.
7/2/02